United States Court of Appeals
for the
District of Columbia Circuit

TRANSCRIPT OF RECORD

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,677

CAROLYN EIERMAN ULINE, *Appellant*

v.

MIGIEL J. ULINE, *Appellee*

868

Appeal from the United States District Court for the District of Columbia

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United States Court of Appeals
For the
District of Columbia Circuit
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QUESTIONS PRESENTED

1. Whether a husband who left his wife against her will in 1930 and since that time has resolutely refused to live with her is entitled to an absolute divorce under the voluntary separation provision of *Title 16, Sec. 403, D. C. Code (1951)*, when the wife has, during the entire period, desired and been willing to resume marital relations with him.

2. Whether where marital relations were severed by the husband leaving the marital abode against the will of his wife and the relations continue to remain severed against her will and desire, she must from time to time endeavor to reestablish marital relations in order to avoid the imputation of acquiescence on her part in the separation.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 11,677

CAROLYN EIERMAN ULINE, *Appellant*

v.

MIGIEL J. ULINE, *Appellee*

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from the final judgment of the United States District Court for the District of Columbia entered in this cause on December 18, 1952. (App. 19)

A. The District Court had jurisdiction pursuant to *Title 11, Sec. 306* and *Title 16, Sec. 403 of the D. C. Code (1951).* Appeal was noted in the Court below on January 5, 1953. (App. 20) The jurisdiction of this Court is based upon *Title 28, Sec. 1291 of the United States Code, 62 Stat. 929.*

B. The complaint and answer necessary to show jurisdiction in the lower Court are contained in the joint appendix, pages 2 to 8.

STATEMENT OF CASE

This is a suit for absolute divorce based on voluntary separation for five (5) years without cohabitation, between parties who were married in 1895. The husband is now 78 and the wife 75 years of age. The appellant (wife) attended Court while confined to a wheel chair and accompanied by a nurse. She was frequently confused while giving her testimony. (App. 34, 35, 38, 44, 49, 52, 81, 82, 84) The appellee (husband) was too ill to attend the trial. (App. 22) All the material evidence produced was either documentary or developed by examination of the wife by counsel for the husband.

In 1930, while the parties were residing in Cleveland, Ohio, the husband left the wife and came to the District of Columbia. He refused to allow the wife to accompany him. (App. 17) He has since maintained his domicile and residence in this district. (App. 16-30) From 1930 to date he has been separated from his wife and has been unwilling to resume marital relations with her. (App. 17) He requested an uncontested divorce on three occasions. (App. 40, 46, 154) The wife refused to institute proceedings for divorce and has always desired and been willing to resume marital relations with her husband. (App. 17, 42) In January 1950 the husband sued the wife in Florida, claiming that she deserted him. (App. 17) This suit was dismissed by the husband without a hearing on the merits. (App. 22) On March 23, 1950 he filed a similar suit in Florida. (App. 17, 131) On July 5, 1950 he obtained a divorce in Mexico. (App. 17, 147) on the same day he married Elva Houseman and is now living with her in the District of Columbia as his wife. On August 24, 1950 he dismissed his second Florida suit. (App. 17) On February 10, 1951 he filed the instant suit against appellant, alleging residence in the District of Columbia for more than two (2) years and voluntary separation for five (5) years without cohabitation. In that suit he alleged his Mexican divorce was believed to be invalid. (App. 2)

The Court below found as a fact that the wife (appellant) had not made a sufficiently sustained and continuous effort to effect a reconciliation and consequently there was a voluntary separation from bed and board for five (5) consecutive years within the scope of the statute. (App. 15, 17)

The Court below, in its opinion, stated: (App. 15, 16)

> "But I am persuaded there was not sufficient effort, not the sufficient effort the law has in contemplation, made by her, and that therefore that amounts to an *unwilling acquiescence* over a long period of years, more than five, in what was clearly a reality." (Emphasis ours)

An absolute divorce was granted to the husband.

STATUTE INVOLVED

Title 16, Sec. 403, D. C. Code (1951) 49 Stat. 539, Chapt. 453, Sec. 1.

> "A divorce from the bond of marriage or a legal separation from the bed and board may be granted for * * * voluntary separation from bed and board for five consecutive years without cohabitation."

STATEMENT OF POINTS

I

The Court erred in holding that "unwilling acquiescence" by a wife to a husband's determination to end the marriage constituted a voluntary separation between them.

II

The Court erred in holding that a husband who left his wife and refused to return to her was entitled to a divorce on the grounds of voluntary separation for five (5) consecutive years even though the wife desired and was willing to resume marital relations with him during the entire period of the separation.

III

The Court erred in holding that a wife, who never agreed to a separation between her and her husband or resigned herself to the permanency of the separation, and always opposed a divorce, was compelled continuously to seek reestablishment of the marital status in order to avoid a finding that she acquiesced in the separation.

SUMMARY OF ARGUMENT

Appellee contended in the Court below that he was entitled to an absolute divorce under the five year voluntary separation provision of our divorce statute.

It is the appellant's contention that the separation between her and her husband, upon which the Court below granted an absolute divorce, was involuntary on her part and never became a voluntary separation for the reason that during the entire period of the separation she had always desired and been willing to resume marital relations with him.

There is no such thing as "unwilling acquiescence" which the Court below imputed to her.

ARGUMENT

I

The Facts Herein Do Not Warrant a Judgment of Divorce

A. The Facts Show the Separation Was not Voluntary:

In order to determine whether a voluntary separation between a husband and wife existed for five (5) consecutive years so as to warrant a judgment of divorce under the statute, we present herewith the facts of the case in chronological order.

The parties were married in 1895. At the time of the trial, the husband was 78 and the wife 75 years of age.

In the sworn complaint filed below, the husband alleged that he and his wife had been voluntarily separated from bed and board, without cohabitation, since 1930. (App. 2)

The sworn answer of the wife admitted the separation but averred that it was caused solely by the husband and that she had never acquiesced in it. She averred that she had always been willing to live with him and had offered to do so, both before and within five (5) years prior to the institution of the suit. (App. 5, 6)

The husband was too ill to appear or testify in Court. (App. 22)

The wife came from Detroit to contest the suit. She attended Court in a wheel chair, accompanied by a nurse. She often was confused in her testimony. (App. 34, 35, 38, 44, 49, 52, 81, 82, 84)

The only evidence introduced by the husband was the testimony of the wife and certain documents.

The testimony showed that in March of 1930 the husband left his wife and their home in Cleveland, Ohio, and came to Washington, D. C. (App. 16, 17) Here he established a business that became very successful. The wife wanted to come with him but he would not permit it. (App. 17, 34) She then moved to Teledo to be near her married daughters. (App. 17, 35) Shortly thereafter Mr. Uline became sick in Washington and was confined to a hospital. She came to see him and was told by him to go home. (App. 36)

The husband has been a resident of Washington, D. C., since 1930. (App. 16, 30) He provided for his wife's day to day needs. On February 7, 1950 the amount he had theretofore voluntarily given was increased by the Court in the maintenance proceedings brought by the wife. (App. 129)

The husband visited with his daughters in Toledo at Thanksgiving and during the Christmas holidays for several years after the separation. At these family gatherings both husband and wife would be present but there was no reconciliation between them. (App. 112, 113, 114)

On August 5, 1938, the husband wrote the wife and requested that she obtain a divorce from him in Reno, Nevada.

He offered to provide $250 per month for her maintenance so long as she lived. He offered an insurance policy as security in the event of his death. (App. 38, 39, 40, Plaintiff's Exhibit 1)

The wife replied as follows: (App. 42, Plft.'s Ex. No. 3)

> "Dear Mike:
>
> "Your letter was such a shock to me that I could not write. After 36 years of married life, one does not terminate it by divorce. For the sake of our children, our grandchildren and our dignity, a divorce must not be. After all, my religious principles would not permit it—and neither should yours.
>
> "You say you want a divorce because you want to make a will. Isn't it conceivable that I might die before you?
>
> "I am very lonely and blue now. It is not pleasant at my age to live alone. The separation is of your choosing. Do not make me suffer more than I am now.
>
> "Sincerely,
>
> "Carrie."

The wife sent the husband a gift on his birthdays and every Christmas. At Christmas she always sent a note asking if she could come to Washington and live with him. (App. 80, 85) However, she stopped this in 1949 or early 1950, when she learned that Elva Houseman, whom he subsequently married, after obtaining a Mexican divorce, was living in his home at Ft. Lauderdale, Florida. (App. 74, 94, 99)

She was asked by counsel for her husband why she sought reconciliation at Christmas. She replied:

> "Well, I thought Christmas meant more to me than the birthdays did. That Christmas was something I always observed and thought a lot of." (App. 90)

The wife testified that she never, at any time during the separation, agreed to the separation, or consented to it, or resigned herself to the fact that he no longer was her husband. (App. 67)

The Court at that time interposed and said:

> "THE COURT: Why not, in view of the fact you had been separated for so many years, for ten years, even while you were living in the same house?
>
> "Tell me why you did not accept what would seem to have been a reality.
>
> "THE WITNESS: You mean a divorce?
>
> "THE COURT: The separation.
>
> "THE WITNESS: Separation.
>
> "THE COURT: Either one or both.
>
> "THE WITNESS: Well, I still cared for him, you know. He was my husband, and he was the father of my children.
>
> "THE COURT: That is what I wanted to know." (App. 68)
>
> * * * * * * * *
>
> "THE COURT: Would it be accurate to say that the reason over all this period of years you never agreed to a divorce, even though you were in fact separated, was because you were a Catholic?
>
> "THE WITNESS: Not that alone. I didn't want to have a divorce.
>
> "THE COURT: Wholly apart from your religious feeling?
>
> "THE WITNESS: Not that, and then I didn't want a divorce. I had two children, you know, to consider.
>
> "THE COURT: My question is, was your religion the only reason you didn't want to have a divorce?
>
> "THE WITNESS: No, I still cared for him, I have said." (App. 69)

From 1938 to 1941, Mrs. Pratt, the daughter of Mrs. Uline, lived in Washington, D. C. (App. 99, 101, 111) Mrs. Uline visited with her daughter several times during that period. (App. 99, 113) Mr. Uline visited the premises where his wife was staying and chatted with her. (App. 114) She did not telephone her busband or go to see him during her visits to her daughter because she was afraid he would stop her allowance. (App. 79, 80) He had often threatened to do so if she did something that displeased him. (App. 89)

In 1945, at their granddaughter's wedding in Detroit, Michigan, Mrs. Uline asked Mr. Uline to allow her to come to Washington with him. (App. 37, 114)

On June 18, 1946, Mr. Uline wrote his wife (Plaintiff's Exhibit 4) and offered to obligate himself and the company he owned to pay her $325 per month for life if she would permit him to get a divorce without interference of any kind. (App. 46) She did not answer this proposal but referred it to her counsel. (App. 46)

On March 27, 1947 Mr. Uline's Florida counsel wrote to her stating that Mr. Uline had retained them to institute a suit against her for divorce (Plaintiff's Exhibit No. 5). (App. 47)

On April 8, 1947 the wife instituted, in the lower Court, a suit for maintenance and requested injunctive relief against the husband to prohibit him from getting a foreign divorce. She alleged, under oath, in paragraph 4 of that complaint, that her husband deserted her in 1930. (App. 124)

His sworn answer to that allegation was that she refused to come to Washington with him. (App. 127) In the instant case the Court found as a fact that the husband left the wife in 1930 and has ever since been unwilling to resume his marital status with his wife even though she requested that she might come to Washington and live with him. (Findings 3 and 4, App. 16, 17)

During the pendency of the local maintenance proceeding, the deposition of the wife was taken. On January 24, 1950 the wife, in answer to questions propounded by her husband's counsel during the course of that deposition, stated:

> "Question: * * * you must have found a certain amount of contentment being alone after the separation, didn't you?
>
> "Answer: No, I didn't. I missed him very much. I didn't want to be separated from him, I didn't like that. That isn't what I wanted. If he would say, today, 'Come and live with me,' I would say 'O'kay'; I would go." (App. 71)

On January 27, 1950, Mr. Uline filed in Florida a sworn declaration of domicile and citizenship indicating his residence as Broward County, Florida. (Defendant's Exhibit 28, App. 161)

On February 1, 1950, in the course of the aforementioned maintenance proceedings, the deposition of the husband was taken. He testified as follows:

Pages 40 and 42 of the deposition.

> "Didn't she ask you if she could come to the District of Columbia with you?
> "Answer: No, sir.
> "Question: Did you tell her she should not come?
> "Answer: No, sir.
> "Question: Would you have brought her to the District of Columbia with you?
> "Answer: I do not think so.
>
> * * * * * * * *
>
> "Are you willing now that Mrs. Uline should resume marital relations with you?
> "Answer: No, sir; it is impossible to live with her."
> (App. 27)

On February 6, 1950, the maintenance case came on for hearing. Mrs. Uline testified before Judge McLaughlin of the District Court at that time that she was ready, willing and able to resume marital relations with her husband. (App. 69)

On February 7, 1950 the Court entered the maintenance judgment. (R. 129)

However, while the maintenance proceeding was pending, the husband filed suit in Florida on January 20, 1950 against his wife for absolute divorce alleging desertion. Voluntary separation was not a ground for divorce in Florida. That action was dismissed without a hearing on the merits.

On March 23, 1950 he again filed suit in Florida for absolute divorce, alleging willful, obstinate and continued desertion by his wife. She answered denying desertion and alleging abandonment by him of her. (App. 136)

On June 10, 1950 and while that suit was pending in Florida, an attorney for Mr. Uline filed suit for an absolute divorce against Mrs. Uline in Mexico. (App. 147) On July 3, 1950, Mr. Uline went to Juarez, Mexico, together with Elva Houseman, and on July 5, 1950 he there obtained a decree of divorce from his wife, which the Court below found to be invalid. On July 5, 1950 (the same day that he obtained a Mexican divorce) he went through a marriage ceremony with Elva Houseman in Mexico. (App. 17)

On August 24, 1950, the second Florida suit for divorce against his wife was dismissed by the husband without a hearing on the merits. (App. 17)

During the time of all these proceedings, Mr. Uline was a resident of the District of Columbia and domiciled therein. (App. 17, 30)

In February 1951 he instituted the instant proceedings. (App. 2) The defendant, in her answer, stated that she has, since the separation of the parties, always been willing to resume marital relations with her husband. (App. 6)

Inasmuch as Mr. Uline was too ill to attend court, the following stipulation was entered into:

> "MR. CAMPBELL: If Your Honor please, Mr. Reilly and I have stipulated, and with this I rest as far as Mr. Uline is concerned, that if Mr. Uline, the plaintiff in this case, were called to the stand he would testify as follows:
>
> "1. He did not keep Mrs. Uline's letters.
>
> "2. He did not receive any letter or card from Mrs. Carolyn Uline after 1933 in which she asked or offered to return to him.
>
> "3. Mrs. Carolyn Uline did not personally offer to Mr. Uline to return to him after the exchange of letters in 1938 until her testimony in the maintenance suit.
>
> "THE COURT: The letter of 1938 has been read into evidence?
>
> "MR. CAMPBELL: The letter of 1938 has been read into evidence.

"Mr. Reilly: That he would so testify, not that that is a fact.

"The Court: I understand that." (App. 118)

Upon conclusion of the hearing, which produced substantially the above, the Court announced as its opinion that the wife "unwillingly acquiesced" in the separation of the parties and had not made sufficient effort to bring about a resumption of marital relations. (App. 16)

The Court concluded that she had acquiesced in the separation which thereby became voluntary and that the husband was entitled to a divorce.

The appellant submits that neither the facts nor the law justify such a conclusion.

B. Unwilling Acquiescence Is Not Equivalent to a Voluntary Separation

The Court below described appellant's state of mind as "unwilling acquiescence". (App. 16) Does this constitute, in law, a "voluntary separation"? We admit that separation without cohabitation has existed for the time required by the statute but we deny it was "voluntary" within the meaning of the statute.

Voluntary separation as a ground for divorce exists only in the District of Columbia, Maryland and Wisconsin. Wisconsin was the first to adopt such a statute. Many years later the District of Columbia followed. In 1937 Maryland adopted such a law. Ten other states permit divorce upon separation for varying degrees of time, regardless of the nature of the separation. Exhibit A, attached hereto, sets forth the various statutes.

Martin v. *Martin, 82 U. S. App. D. C. 40 (1947), 160 F. (2) 20,* we submit, governs the present case. It differs only in that here Mrs. Uline personally sought reconciliation and reestablishment of the marriage. The Court below found as a fact that her efforts were so desultory, sporadic and infrequent as to impute acquiescence. We submit a wife need not go to absurd lengths to effect reconciliation, particularly where her advances are rebuffed.

In the *Martin* case, not only the wife but her children sought reestablishment of the marriage. There was no evidence below that Mrs. Uline sought to have her adult children intercede. That should not be necessary. Intimate and close relation between husband and wife has always been fostered by the law. It could be quite obnoxious for a spouse to seek the help of her children in such a situation. They may, quite justifiably, prefer that the children do not know the cause of the separation. We submit no adverse conclusion should be drawn when a wife relies upon her own efforts to reestablish the marital home. Originally, the home was established by the man and woman. When the home no longer exists because of the abandonment of it by the husband, why should conclusions adverse to the wife be drawn if she does not seek the aid of a third person to reestablish it?

This Court in *Martin* v. *Martin, supra,* said: (Page 41)

> "The only question is whether the separation was voluntary within the meaning of the statute."

Similarly, in the instant case that was the only question below. In *Martin* v. *Martin, supra,* this Court held: (Page 41)

> "At its inception, the separation was not by mutual consent, as the husband ordered the wife to leave their home, and she protestingly complied. This Court has held, however, that the issue is whether the separation was voluntary or involuntary throughout its duration. Its nature at the beginning is not determinative; for even if one party did not agree to the separation at the outset, he might thereafter affirmatively consent or silently acquiesce for the required period. We have also held that '* * * *if either party does not voluntarily and continuously acquiesce in separation during five years, the statute does not authorize divorce* even though the separation was originally voluntary on both sides.'
>
> "We agree with the Court of Appeals of Maryland *(France* v. *Safe Deposit Company, 170 Md. 306, 4 Atl. (2) 717)* which, in dealing with a similar statute, said,

> 'Where a relationship exists between two persons by reason of their common consent, it can only be voluntarily terminated by both, when both are *willing and intend* that it be terminated. If one of his own free will and accord ends the relationship against the will and wish of the other, the termination is voluntary as to the one, involuntary as to the other.' As that court added, the very word 'voluntary' connotes an agreement, and unless the parties agree to live apart the separation cannot be voluntary." (Emphasis ours)

The appellant, in *Martin* v. *Martin, supra,* maintained that because the Court found that for all practical purposes his marriage ended in 1939, the trial Court should have granted a divorce. However, this Court said: (page 42)

> "The argument is invalid for the reason that the statement quoted from the cited cases must not be extended so as to destroy the effect of the word 'voluntary' which is present in the statute. The District Court may put a legal end to marriages which no longer exist in fact only in those cases where the separation has been continuously voluntary on the part of both husband and wife for the statutory period."

It will be noted that the Court below, in its opinion, stated that Mrs. Uline *"unwillingly acquiesced"* (App. 16), and found as a fact that she had always desired and been willing to resume the marital status. (App. 17) We submit that voluntary separation can only exist when both are willing and intend that it result. That situation did not exist in this case.

In *Bowers* v. *Bowers, 79 U. S. App. D. C. 146, 147 (1944) 143 F. (2) 158,* this Court said:

> "The District of Columbia Code 1940, § 16-403, authorizes divorce for 'voluntary separation from bed and board for five consecutive years without cohabitation.' The issue turns upon the continuing character of the separation, not its origin; but its origin is evidence of its continuing character. We have held that if both parties voluntarily and continuously ac-

> quiesce in separation during five years, the statue authorizes divorce even though the separation was not originally voluntary on both sides. *Parks* v. *Parks, 73 App. D. C. 93, 116 F. 2d 556.* It is equally true that if either party does not voluntarily and continuously acquiesce in separation during five years, the statute does not authorize divorce even though the separation was originally voluntary on both sides. But one who contends that a voluntarly separation ceased to be voluntary should have the burden of proving his contention. The separation in the present case was originally voluntary on both sides. Although the wife afterwards asked her husband to return to her, the court was 'not convinced' that her requests were 'made in good faith'. It follows that the judgment should be affirmed."

This too is different from the Uline situation. The original separation of the husband and wife in the *Bower* case was voluntary. It was not in the *Uline* case. Mrs. Uline never acquiesced in the separation. The Court below found she "unwillingly acquiesced". This, we contend, is insufficient to make a separation voluntary. She could resign herself to the fact that her husband was not going to return to her. Resignation to the inevitable is not an approval of the result or voluntary acquiescence thereto.

The plaintiff below, we submit, did not prove by a preponderance of the evidence that his abandonment of his wife became a voluntary separation by her acquiescence. She, at worst, resigned herself to his determination not to allow her to return to him. This resignation did not occur until Mrs. Houseman entered his Florida home in late 1949 or early 1950. It will also be noted that Mrs. Uline in 1949 and 1950, while testifying in Court and by deposition in the maintenance proceeding, stated that she was willing and anxious to return to him. She repeated this in the trial below. Upon inquiry by the trial Court as to her reason therefor, she replied that she still cared for him and that he was the father of her children.

It is interesting to note that in the *Bowers* case, this Court said that one who contends a voluntary separation ceased to be voluntary should have the burden of proving his contention. Similarly, we submit, that where, as here, a husband left his wife against her will, the burden is on him to establish that the separation became voluntary, and when it became voluntary.

The law is well established that where a state of things is shown to have existed at a given time, its continuance is presumed. *Wigmore, 3rd Ed., Vol. IX, 461, Sec. 2530* (authorities cited), including *Penn Oil Co.* v. *Vacuum Oil Co., 60 App. D. C. 96, 99, 44 F. (2) 1008.*

We submit that Mrs. Uline's opposition to a separation was established. Under the law it was presumed to continue until rebutted. We think her opposition to the separation was not refuted.

In the case of *Butler* v. *Butler, 81 U. S. App. D. C. 26 (1946), 154 F. (2) 203,* this Court said: (Page 26)

> "The trial court found that the plaintiff deserted the defendant in 1936 and 'that there was no agreement between the parties to separate, nor did the separation become voluntary by acquiescence.' It appears from the record that throughout the separation the defendant wife was demonstrably interested in bringing about a reconciliation. She maintained their living quarters for sometime after the plaintiff had gone to live elsewhere. Because of an alleged promise by the plaintiff, that a reconciliation would ensue, she spent a night in September of 1942 in a family relationship with her spouse. Thereafter, for some weeks she held herself in readiness to take up residence with the plaintiff. *There is no indication that she at any time willingly accepted or acquiesced in the separation.*
>
> "For the plaintiff to be entitled to a divorce under the applicable provision of the District Code it must be established that the separation was voluntary at the outset, or that 'the defendant's silent acquiescence made the separation voluntary, in the statutory sense * * *.'' (Italics ours)

In the *Butler* case the Court held there was no indication that the wife at any time willingly accepted or acquiesced in the separation. The opinion below in the present case stated that there was not sufficient effort by Mrs. Uline to effect reconciliation which amounted, on her part, to an "unwilling acquiescence" in the separation. However, the Court found, as a fact, that she reluctantly recognized this permanent separation as a reality but was opposed to a divorce and, in her own mind, always desired and had been willing to resume the marital status. (App. 14, 15, 16)

To sustain the judgment below, this Court must hold that an abandonment by a husband of his wife becomes a voluntary separation under the statute even though she opposes a divorce and is willing to resume her marital position. This is contrary to the statute. There is nothing in the legislative history of the statute to indicate such an intention by the Congress.

C. The Decision Below Is Contrary to the Congressional Intent

The legislative history of the pertinent statute is contained in *Congressional Record,* Vol. 79, Part 8, Page 8325, 74th Congress, 1st Session.

In the original bill (S. 2259) passed by the Senate on May 28, 1935, there was a provision which permitted a divorce upon:

> "* * * Separation for five consecutive years without cohabitation."

In *Senate Reports,* Vol. 2, 74th Congress, 1st Session, Report No. 720, Calendar No. 750 (May 24, 1935) it is stated:

> "The purpose of this bill is to broaden the divorce laws of the District of Columbia. * * * The committee feels the present law is too stringent, and section 1 of the bill amends section 966 of the District Code to include as grounds for divorce * * * (4) separation for five consecutive years without cohabitation, * * *"

There is nothing in the hearings or the debates which suggest that it was the purpose of Congress to permit termination in law of a marriage, that has become distasteful to one spouse only.

The District of Columbia Committee of the Senate reported favorably on S. 2259 which did not contain the word "voluntary" before the word "separation".

In *House Reports,* Vol. 3, 74th Congress, 1st Session, Report No. 1532, to accompany Senate 2259, there is a statement:

> "The five year separation clause is amended by inserting the word 'voluntary' and from 'bed and board' so that it now reads:
>
> " 'Voluntary separation from bed and board for five consecutive years without cohabitation.' "

However, some of the States permit divorce because of separation alone, regardless of culpability. Such statutes are set forth in Exhibit "A" attached hereto. Congress expressed no such intent for the District of Columbia.

The debates on the bill which eventually became the statute under consideration took place July 22, 1935. They are reported in *Congressional Record,* Vol. 79, page 11,586 (74th Congress, 1st Session). There was a discussion as to whether the proposed statute would create a divorce mill in the District of Columbia. On page 11,587 we find:

Mr. Carpenter:

> "We have tried to make it just as stringent as possible, and still give relief."

Mr. Carpenter then reviewed the divorce laws of the various states. (Pages 11588 to 11592) He said:

> "Separation usually for a period of five years, without cohabitation, is ground for absolute divorce in Arizona, Kentucky, Nevada, Rhode Island, Texas, Washington and Wisconsin."

Page 11593—Mr. Palmisano

> "The Senate bill read 'separation for five years without cohabitation * * *.' We amended it to include

> voluntary separation from bed and board in order that the separation should be real and the parties should be separated."

Page 11593—Mr. McCormick

> "Perhaps the couple agreed to separate. * * * They separated simply as the result of a voluntary agreement. Why should they be permitted to get a divorce under such circumstances, even though they may have been separated five years."
>
> * * * * * * * *
>
> "I am referring to the couple that voluntarily separates where there is no justification and where there is no specific reason. Now, why should we permit a voluntary separation to ultimately become a ground for divorce in the absence of some specific violation of the marital law."

Page 11593—Mr. Blanton

> "Suppose a man and wife should reach the conclusion that they are incompatible and that living together is impossible * * *. They agree to separate and live apart and do live apart. Why should they not be entitled to a divorce."

We submit that the legislative history of the statute shows that in order for a divorce to be granted under this statute there must be a concurrence in the separation by both parties. "Unwilling acquiescence" by one spouse does not constitute such a concurrence.

The then pending bill had the universal approval of the various District of Columbia civic organizations. We are confident it would not have received such endorsements if unwilling acquiescence in a separation or resignation to the stubborn determination of one of the spouses could be construed as a voluntary separation.

In *Boyce* v. *Boyce, 80 U. S. App. D. C. 355, 153 F. (2) 229 (1946)* this Court again had a voluntary separation case before it. It reiterated its previously announced opinion that silent acquiescence made the separation voluntary. In that case, however, the parties were living in the same house but in different quarters and ate at different times. Over a period of five (5) years, the husband on only two occasions attempted to effect a reconciliation. That case held that if a spouse reconciles himself or herself to a separation it becomes voluntary.

However, in the instant case, Mrs. Uline testified that she continued her endeavors to effect reconciliation by communicating, through the mail, with her husband at Christmas time. This is understandable in a lady who had a religious regard for Christmas. She stopped doing so in late 1949 or early 1950 when she learned that Mrs. Houseman was living in her husband's home. That too is understandable. However, Mrs. Uline testified in proceedings in 1949, 1950 and 1952 of her desire to reestablish the home which was broken up against her will. (App. 67, 69, 71)

In *Buford* v. *Buford, 81 U. S. App. D. C. 169, 170, 156 F. (2) 567 (1946)* the husband sued for divorce on the grounds of voluntary separation. However, in that case the wife had sued for a divorce on the grounds of desertion. That, we submit, indicates she considered the marriage to be at an end. The Court there announced:

> "When a separation has continued for more than five (5) years and neither party has tried to end it, a divorce should be granted."

Here there was uncontradicted evidence that Mrs. Uline, within fourteen months prior to the instant suit, twice stated in judicial proceedings that she was ready and willing to return to her husband. Mr. Uline testified that he would not return to her. This, under any circumstance, we submit, precludes the allowance of a divorce on the ground of acquiescence in a separation for five (5) consecutive years.

In the case of *Dorsey* v. *Dorsey (U. S. D. C. D. C. 1950) 94 F. S. 917, affirmed 90 U. S. App. D. C. 284, 195 F. (2) 567,* the Court held:

> "It is a physical separation *plus a mental disposition* which gives a voluntary character to the separation which the Court must find in order to fulfill the Code requirements." (Italics ours)

There, a voluntary separation existed but, because the wife became insane before five years had elapsed, the Court held that the mental disposition to continue the separation was not present. This case stresses the importance of mental viewpoint as a determinative factor.

In the instant case, the mental disposition of Mrs. Uline was always averse to a separation. The Court below so held in its opinion and findings of fact. (App. 14, 15, 16, 17) The mental disposition of Mrs. Uline was to restore and preserve the marriage.

In *Cocci* v. *Cocci, 88 U. S. App. D. C. 43, 185 F. (2) 898 (1950)* the Court held a separation was sufficiently voluntary to award a divorce. There, the wife sought to bring about a reconciliation through the intermediation of a third party. However, this attempt to reestablish the marital status was at a time earlier than the beginning of the five (5) year period.

Mrs. Uline, within the five (5) year period prior to the institution of the suit and on many occasions prior to that, herself sought reconciliation with her husband. Mrs. Uline took the steps she thought most likely to succeed. She should not be penalized because the Court below evidently thought a better course would have been to seek reconciliation through her children.

The case of *Parks* v. *Parks, 73 App. D. C. 93, (1940) 116 F. (2) 556,* was relied on by the plaintiff below and discussed by the Court. It will be noticed that in that case, like the *Uline* case, the husband left the wife although she begged him not to go. *It is of the utmost importance to* *notice that at no time after Parks left did his wife ask him to return or make any attempt at all to bring about a reconciliation.*

In *France* v. *Safe Deposit & Trust Co. of Balto., 176 Md. 306, 4 A (2) 717 (Ct. of App. Md. 1939)* the Court had before it the construction of the words "voluntary separation" in the Maryland statute.

Among the questions presented to the Maryland Court of Appeals was:

> "What is the true meaning of the word 'voluntary'?"

The Court said at 4A2, 726

> "Where a relationship exists between two persons by reason of their common consent, it can only be voluntarily terminated by both, when both are willing and intend that it be terminated. If one of his own free will and accord ends the relationship against the will and wish of the other, the termination is voluntary as to one, involuntary as to the other."

In *Foote* v. *Foote, 190 Md. 171, 57 A (2) 804, 808 (Md. Ct. of App. 1948)* the Court in interpreting the phrase "voluntary separation" stated that it signified a willing concert in the doing of the act by both parties.

The word "voluntary" connotes an agreement. cf. *Beck* v. *Beck, 180 Md. 321, 24 A (2) 295; Miller* v. *Miller, 178 Md. 12, 11 A (2) 630; Kline* v. *Kline, 179 Md. 10, 16 A (2) 924; Nichols* v. *Nichols, 181 Md. 392, 30 A (2) 446; and Hahn* v. *Hahn, 192 Md. 561, 64 A (2) 739.*

In *Sanders* v. *Sanders (Sup. Ct. Wis. 1908) 135 Wis. 613, 116 N. W. 176,* the Court held that the separation had to be mutually voluntary in its inception and continue so through the statutory period.

In *Krause* v. *Krause (Sup. Ct. Wis. 1922) 177 Wis. 165, 187 N. W. 1019, 1020,* the wife sought a reconciliation with her husband even after she obtained from him a divorce from bed and board. She frequently wrote letters asking reconciliation. They did not expressly ask for a revocation of the divorce. The trial court denied the divorce and upon appeal the Supreme Court of Wisconsin affirmed and said:

> "Her evidence reveals a consummate desire on her part for a restoration of marital relations and persistent and continuous efforts to bring about a reconciliation. * * * Her general conduct evidenced a sincere desire to resume full marital relations.
>
> * * * * * * * *
>
> The living apart was not voluntary on her part and the plaintiff was properly denied a divorce."

The authorities above reviewed indicate that in order for a divorce to issue under the terms of the statute, a mental disposition to terminate the marriage must exist on the part of each spouse. Both must be willing and intend that it terminate. Both must voluntarily and continuously acquiesce in the separation for five years without cohabitation. If either party does not voluntarily and continuously acquiesce in a separation for five years, the statute does not authorize a divorce. Time alone will not change an involuntary absence of one spouse from the other into a voluntary one.

The Court below found as a fact that the husband left the wife in 1930 and during that entire time was unwilling to return. (App. 16) The Court also found as a fact that the wife had always desired and been willing to resume the marital status. (App. 17)

We think it manifest that the mental disposition of the wife was never disposed to a separation and that she was never willing that the marriage should terminate.

The debates in Congress indicate that separation alone was not enough. The word "voluntary" was the considered judgment of Congress and was inserted in the statute for a purpose.

CONCLUSION

The husband, although continuously a resident of the District of Columbia, twice in early 1950 sought to obtain a divorce in Florida from his wife. There he alleged that she willfully deserted him. (App. 17, 131) On January 27, 1950 he swore that he was a resident of Florida and intended to make it his home. (App. 161) In his complaint in this action, filed on February 10, 1951, he stated his residence to be and to have been in the District of Columbia for more than two (2) years prior thereto. On July 5, 1950 he obtained a divorce in Mexico which is invalid. This conduct shows his determination to obtain a divorce at any price, as well as a flouting of the laws of our community.

We submit, on the facts and the law, the divorce should have been denied. The judgment should be reversed with instruction to deny the relief requested by plaintiff below.

Respectfully submitted,

James F. Reilly,
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Washington 5, D. C.,
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and

Shumaker, Loop & Kendrick,
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Toledo 4, Ohio,
Of Counsel.

EXHIBIT "A"

Jurisdictions Which Authorize a Divorce for Voluntary Separation:

DISTRICT OF COLUMBIA

District of Columbia Code 1951

> "16-403 Causes for divorce . . .
> A divorce from the bond of marriage or a legal separation from the bed and board may be granted for . . . voluntary separation from bed and board for five consecutive years without cohabitation, . . ."

MARYLAND

Annotated Code of Maryland (Flack) 1951, Art. 16, Sect. 33

> "Upon a hearing of any bill for a divorce, the court may decree a divorce a *vinculo matrimonii* for the following causes, to wit: * * * fifthly, when the husband and wife shall have voluntarily lived separate and apart, without any cohabitation, for three consecutive years prior to the filing of the bill of complaint, and such separation is beyond any reasonable expectation of reconciliation; . . ."

WISCONSIN

Wisconsin Statutes 1951, Sec. 247.07, sub. sec. 7

> "(7) Whenever the husband and wife shall have voluntarily lived entirely separate for the space of five years next preceding the commencement of the action, the same may be granted at the suit of either party. And such living apart for five years or more, pursuant to a decree of divorce from bed and board, without request during that period by either party to the other in good faith for a reconciliation and revocation of said judgment, shall not be any bar to an absolute divorce upon this ground at the suit of either party; provided further, however, that no divorce absolute upon this ground shall be granted unless six months of such separation shall be subsequent to the time when this act shall go into effect."

Jurisdictions Which Permit Divorce on Separation Alone:

ARIZONA

Arizona Code Annotated 1939

> "27-802. Absolute divorce—Grounds listed.—
> (9) When for any reason the husband and wife have not lived or cohabited together as husband and wife for a period of five (5) years or more."

ARKANSAS

Arkansas Statutes Annotated 1947

> "34-1202. Grounds for divorce.—
> Seventh: Where either husband or wife have lived separate and apart from the other for three (3) consecutive years, without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether such separation was the voluntary act or by the mutual consent of the parties, and the question of who is the injured party shall be considered only in the settlement of the property rights of the parties and the question of alimony."

IDAHO

Idaho Code

> "32-610. Separation without cohabitation.—When married persons have heretofore lived or shall hereafter live separate and apart for a period of five years or more without cohabitation, either party to the marriage contract may sue for a divorce which shall be granted on proof of the continuous living separate and apart without cohabitation of the spouses during said period of five years or more."

KENTUCKY

Baldwin's Kentucky Revised Statutes Annotated

> "403.020 (2117) Grounds for divorce.
>
> (1) A divorce may be granted to either party for the following causes:
>
> (b) Living apart without any cohabitation for five consecutive years next before application."

LOUISIANA

Louisiana Revised Statutes of 1950

> "Sec. 301. Continuous separation for two years as ground for absolute divorce.
>
> When married persons have been living separate and apart for a period of two years or more, either party to the marriage contract may sue, in the courts of his or her residence within this state, provided such residence shall have been continuous for the period of two years, for an absolute divorce, which shall be granted on proof of the continuous living separate and apart of the spouses, during the period of two years or more."

MINNESOTA

Session Laws of Minnesota for 1951, Chapter 637

> ". . . Section 1. Minnesota Statutes 1949, Section 518.06, is amended to read as follows:
>
> 518.06 Grounds. . . .
>
> (8) Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action, and continuous separation under an order or decree of separate maintenance for a period of two years immediately preceding the commencement of the action.
>
> "A decree of divorce may be adjudged to either husband or wife notwithstanding that both have conducted themselves in such manner as to constitute grounds for divorce."

NEVADA

Nevada Compiled Laws Supplement 1931-1941

> "Sec. 9467.06. ADDITIONAL CAUSE FOR DIVORCE. Sec. 1. Divorce from the bonds of matrimony may be obtained, in addition to the causes now provided by law and subject to the same procedure and requirements, for the following cause:
>
> When the husband and wife have lived separate and apart for three consecutive years without cohabitation the court may, in its discretion, grant an absolute decree of divorce at the suit of either party."

NORTH CAROLINA

General Statutes of North Carolina

"Sec. 50-5. Grounds for absolute divorce.—

. . .

"Sec. 50-6. Divorce after separation of two years on application of either party.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff or defendant in the suit for divorce has resided in the State for a period of six months. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorce."

RHODE ISLAND

General Laws of Rhode Island 1938 Chapter 416

"Sec. 3. Whenever in the trial of any petition for divorce from the bond of marriage, it shall be alleged in the petition that the parties have lived separate and apart from each other for the space of at least 10 years, the court may in its discretion enter a decree divorcing the parties from the bond of marriage, and may make provision for alimony."

TEXAS

Vernon's Texas Civil Statutes

"Art. 4629. 4631-2. Grounds for divorce
A divorce may be decreed in the following cases:

. . .

(4) Where a husband and wife have lived apart without cohabitation for as long as ten (10) years."

WASHINGTON

Revised Code of Washington Title 26, Chap. 26.08, Sec. 26.08.020, sub. sec. 9

"(9) A divorce may be granted to either or both parties in all cases where they have heretofore lived or shall hereafter live separate and apart for a period of five consecutive years or more, without regard to fault in the separation."

WYOMING

Wyoming Compiled Statutes Annotated 1945

> "3-5906. Additional cause for divorce.—A divorce from the bonds of matrimony may be obtained, in addition to the causes now provided by Chapter 35, Revised Statutes of Wyoming, 1931 . . . and subject to the same procedure and requirements, for the following cause:
>
> "When the husband and wife have lived apart for two (2) consecutive years without cohabitation but not upon such ground if such separation has been induced or justified by cause chargeable in whole or material part to the party seeking divorce upon such grounds, in the action."

APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,677

CAROLYN EIERMAN ULINE, *Appellant*

v.

MIGIEL J. ULINE, *Appellee*

Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

I.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

Filed Feb. 10, 1951

227 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 587-'51

Migiel J. Uline, Kenmore Apartment, 5415 Connecticut Avenue, Washington, D. C., *Plaintiff*

v.

Carolyn Eierman Uline, *Defendant*

Complaint for Absolute Divorce on the Ground of Voluntary Separation for More Than Five Consecutive Years

1. Jurisdiction of this Court is invoked under Title 11, Sections 301, *et seq.* and Title 16, Section 403 of the District of Columbia Code (1940).

2. Plaintiff Migiel J. Uline is a citizen of the United States and has been a bona fide resident of the District of Columbia for a period of more than two years next preceding the institution of this suit.

3. Defendant Carolyn Eierman Uline is a citizen of the United States and resides in Detroit, Michigan.

4. Plaintiff and defendant were lawfully married in Cleveland, Ohio, on June 18, 1895. Two children have been born of said marriage, namely, Myrtle Uline Pratt and Hazel Uline Capron, both of whom are of full age.

5. Plaintiff and defendant have been voluntarily separated from bed and board since March 1, 1930, and have not cohabited since that date.

6. The following is a list of the places where the plaintiff has actually resided since March 1, 1930: Year
228 1930, Hotel Pennsylvania, Washington, D. C., and
Hotel Fairfax, Washington, D. C.; 1931 and 1932,

Hotels Fairfax and Commodore, Washington, D. C.; 1933 to September 1948, Broadmoor Apartments, 3601 Connecticut Avenue, N. W., Washington, D. C.; September 1, 1948, to January 1950, Westchester Apartments, 3900 Cathedral Avenue, Washington, D. C.; January 1950 to July 1950, Fort Lauderdale, Florida (visiting on doctor's orders); July 1950 to October 1950, 2909 Foxhall Road, Washington, D. C.; October 1950 to January 1951, Fort Lauderdale, Florida (for temporary sojourn only); January 29, 1951, to date, Mayflower Hotel and Kenmore Apartment, Washington, D. C.

7. Plaintiff is informed and believes and therefore avers that from 1930 to 1949 defendant resided at 2250 Torrey Hill Drive, Toledo, Ohio; and from 1949 to the present time defendant has been residing and now resides at 1913 West McNichols Road, Detroit, Michigan.

8. On July 5, 1950, a court in Juarez, Mexico, entered a decree purporting to divorce the plaintiff and defendant, and thereafter on July 5, 1950, plaintiff, acting in good faith and believing himself to be divorced, went through a marriage ceremony with Elva Houseman. Plaintiff and said Elva Houseman (now Elva Houseman Uline) both believed this marriage ceremony to be valid, and since said marriage ceremony plaintiff and said Elva Houseman Uline have lived together as husband and wife.

9. Defendant has refused to recognize the validity of the divorce decree between plaintiff and defendant referred to in paragraph 8 of this complaint, and has asserted and continues to assert that said divorce decree is void, and on or about October 28, 1950, defendant filed a suit against the plaintiff in the Circuit Court of the Fifteenth Judicial Circuit of Florida, claiming that said divorce decree is void and asking that court to declare that she is still plaintiff's wife.

229 10. Plaintiff is now advised by his present counsel and therefore avers that the decree of the Juarez,

Mexico Court divorcing plaintiff and defendant will not be recognized as valid within the territorial jurisdiction of this Court.

11. Plaintiff is now paying to the defendant permanent maintenance at the rate of $112.50 per week, pursuant to order entered on February 7, 1950, in Civil Action No. 1491-47 in this Court.

WHEREFORE, plaintiff demands:

1. That this Court may grant to plaintiff a judgment of absolute divorce from the defendant upon the ground of voluntary separation without cohabitation for more than five years.

2. That plaintiff may have such other and further relief as to the Court may seem meet and proper.

MIGIEL J. ULINE
Migiel J. Uline

EDMUND D. CAMPBELL
Edmund D. Campbell
Southern Building
Washington, D. C.
Attorney for Plaintiff

DISTRICT OF COLUMBIA, ss:

MIGIEL J. ULINE, being duly sworn, deposes and says that he had read the foregoing complaint for absolute divorce by him subscribed, that he knows the contents thereof, and that he verily believes the matters and things stated therein to be true.

MIGIEL J. ULINE

SUBSCRIBED and sworn to before me this 10th day of February, 1950.

(SEAL)

SOPHIA PESCHEL
Notary Public, D. C.
My Commission Expires June 30, 1951

* * * * * * * * * *

230 Filed April 2, 1951

Answer to Complaint for Absolute Divorce

Carolyn Eierman Uline, defendant in the above captioned action, for her answer to plaintiff's Complaint for Divorce, states to this Honorable Court as follows:

1. Defendant admits the averment of paragraph 1 of the Complaint that the jurisdiction of this Court is invoked thereby under the statutory sections therein referred to.

2. Defendant admits the averment of paragraph 2 of the Complaint that plaintiff is a citizen of the United States. In answer to the plaintiff's allegation of bona fide resident of the District of Columbia, this defendant invites the attention of the Court to the fact that the planitiff herein on Janury 30, 1950, filed a petition against her for divorce in the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Broward County, which petition contained the averment—"That plaintiff is an actual and bona fide resident of the State of Florida, and has been such a resident for more than 90 days last past". Said petition was dismissed at the plaintiff's request on February 16, 1950. Defendant further avers that the plaintiff herein, on March 23, 1950, filed another petition against her for divorce in said Circuit Court of Broward County, Florida, which petition contained the same averment, to wit—
231 "That plaintiff is an actual and bona fide resident of the State of Florida, and has been such a resident for more than 90 days last past". Said petition was dismissed at the plaintiff's request on August 24, 1950.

3. Defendant admits the averment of paragraph 3 of the Complaint.

4. Defendant admits the averments of paragraph 4 of the Complaint.

5. Defendant admits the averments of paragraph 5 of the Complaint that plaintiff and defendant have been sepa-

rated from bed and board since March 1, 1930, and have not cohabited since that date. Defendant denies the averment of said paragraph that said separation has been voluntary. Defendant avers that said separation was caused solely by plaintiff, that she has always been ready and willing to live with plaintiff, and has offered to do so prior to the commencement of this action, and within the last five years. She has never acquiesced in a separation.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6 of the Complaint, except such statements contrary to parts thereof, made by plaintiff as set forth in paragraph 2 hereinabove.

7. Defendant admits the averments of paragraph 7 of the Complaint as to her residence, except that from about March 1930 to about 1940 she lived at 2214 Putnam Street, Toledo, Ohio.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 of the Complaint that on July 5, 1950, a court in Juarez, Mexico entered a decree purporting to divorce the plaintiff and defendant. Defendant avers that if such a purported decree was entered, it was without the service of any summons upon, or notice to, defendant, and without her knowledge, and that the same was and is wholly void and without effect in the United States of America.
232 Defendant avers that she has been informed and believes to be true, the averment of said paragraph 8 of the Complaint that on July 5, 1950, the plaintiff went through a marriage ceremony with one Elva Houseman. Defendant denies that plaintiff, in going through such a ceremony, acted in good faith and believed himself to be divorced from defendant. Defendant admits that since July 5, 1950, plaintiff and said Elva Houseman have lived together. Defendant denies that plaintiff and said Elva

Houseman believed the marriage ceremony between them to be valid, and avers that each and both of them knew that the same was a pretense and a sham, wholly without validity. Defendant avers that plaintiff and said Elva Houseman have falsely held themselves out as husband and wife, since July 5, 1950, and are still continuing to do so, and are still living together. Defendant avers that the relationship between plaintiff and said Elva Houseman is not that of husband and wife, and that their cohabitation is without right, and is in violation of law and the marital rights and status of defendant as plaintiff's lawful wife. Defendant denies each and all of the averments of paragraph 8 of the complaint not herein specifically admitted to be true.

9. Defendant admits the averments of paragraph 9 of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10 of the Complaint as to advice given to plaintiff by his counsel, and avers that plaintiff, at the time the purported decree of divorce of plaintiff and defendant was rendered by the Juarez, Mexico Court, if such decree were in fact entered, knew the same was wholly void in the United States of America.

11. Defendant admits the averments of paragraph 11 of the Complaint.

12. In further answering, this defendant denies all allegations not admitted.

233 WHEREFORE, defendant prays that the prayer of said Complaint for divorce be denied, that the Complaint of plaintiff be dismissed, that defendant recover her costs and attorney fees herein, and for all such other and further relief in the premises to which she is entitled.

CAROLYN EIERMAN ULINE
Carolyn Eierman Uline

STATE OF MICHIGAN } ss:
COUNTY OF WAYNE }

Carolyn Eierman Uline, being duly sworn, deposes and says that she has read the foregoing Answer to Complaint for Absolute Divorce by her subscribed, that she knows the contents thereof, and that she believes the matters and things stated therein to be true.

CAROLYN EIERMAN ULINE
Carolyn Eierman Uline

Subscribed and sworn to before me this 29th day of March, 1951.

WALTER H. DAGNER
Notary Public
My Commission Expires March 4, 1955.

• • • • • • • • • •

241 Filed Jan. 11, 1952

Interrogatories to the Plaintiff

Comes now the defendant, by and through her attorney, whose interests are adverse to those of the plaintiff, and in accordance with Rule 33 of the Federal Rules of Civil Procedure requests that the defendant answer the following interrogatories:

1. Where do you now live?

2. How long have you lived there?

3. What is your condition of health?

4. From what date have you been a bona fide resident of the District of Columbia as alleged in the complaint filed herein?

5. Under what circumstances did you become separated from the defendant herein on or about March 1, 1930?

6. Did you and the defendant agree to live separate and apart on that date?

7. If answer to question No. 6 is yes, was that agreement reduced to writing?

8. If answer to question No. 6 is no, on what date did you mutually agree to live separate and apart?

9. Under what circumstances did you mutually agree to live separate and apart?

242 10. When did you come to the District of Columbia?

11. Did the defendant come to the District of Columbia with you?

12. Did you make provisions for a home in the District of Columbia for you and the defendant?

13. If answer to question No. 12 is no, why not?

14. At the time you came to the District of Columbia did you tell, advise, or in any manner communicate to the defendant that she was not to come to the District of Columbia with you?

15. Did you refuse to permit defendant to come to the District of Columbia with you so that a matrimonial residence could be established in the District of Columbia?

16. Prior to March 1, 1930, on how many occasions had you left the matrimonial abode of you and the defendant?

17. Give the dates, if answer to question No. 16 indicates that you had left the matrimonial abode.

18. What was the reason for such departure from your matrimonial abode?

19. Have you ever requested the defendant to obtain a divorce from you?

20. If answer to question No. 19 is yes, on how many occasions.

21. Have you ever stated to the defendant that if she did not get a divorce you would?

22. Did you ever offer to pay to the defendant all expenses, or part of them, incident to a divorce in the event defendant obtained one?

23. On how many occasions since 1930 have you consulted counsel relative to obtaining a divorce from the defendant in any jurisdiction?

24. Identify these attorneys by giving their names and addresses.

243 25. In what courts other than the District of Columbia have you instituted divorce proceedings against the defendant?

• • • • • • • • • •

30. Did you allege in January 1950 that you were a resident of the State of Florida in filing a suit for divorce against the defendant?

31. On January 27, 1950 did you file a declaration of domicile and citizenship in the State of Florida?

32. If answer to question No. 31 is yes, was it in Broward County, Florida?

33. Did you swear to that statement?

* * * * * * * * * *

245 58. Will you authorize and empower any attorney at law with whom you discussed your marital difficulties with the defendant to testify and reveal to this court the advice given by him to you relative to the grounds of the divorce and the requisite domicile?

* * * * * * * * * *

248 Filed Jan. 30, 1952

Plaintiff's Answers to Defendant's Written Interrogatories

For answer to the written interrogatories served upon plaintiff by defendant on the 10th day of January, 1952, pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiff states as follows:

No. 1. 1545 Geranium Street, N. W., Washington, D. C.

No. 2. Since May 2, 1951.

No. 3. Very poor.

No. 4. Since the year 1931.

No. 5. In March 1931, when the defendant and I were still living together in our home in Cleveland, Ohio, I traveled to Washington, D. C. and stayed there for about a month, for the purpose of launching a business venture in that city. While I was in Washington at that time, the defendant notified me that she had decided to move to Toledo, and requested me to send her checks there. Since that time the defendant and I have never lived together under the same roof.

No. 6. No. Not on March 1, 1930 or on March 1, 1931.

No. 7. ——

No. 8. Toward the end of March 1931, as set forth in answer to interrogatory No. 9.

249 No. 9. As aforesaid in my answer to Question number 5, defendant notified me, toward the end of my month's stay in Washington, in March 1931, that she was moving to Toledo. She so notified me without having previously consulted me in that regard; but I acquiesced in her decision and sent checks to her in Toledo for her maintenance, as she requested.

No. 10. In March 1931, as aforesaid.

No. 11. No.

No. 12. No.

No. 13. When I first came to the District of Columbia in March 1931 for a month's stay, I did not know whether or not I would succeed in establishing myself here in business, and therefore I was not certain of establishing a home here. Furthermore, I was ready to acquiesce in a separation from defendant, should she propose it or acquiesce in it herself—as in fact she did by notifying me of her decision to move to Toledo.

No. 14. No.

No. 15. No.

No. 16. On a great many occasions, my absence in each and every case being temporary, and of short duration.

No. 17. I cannot answer this question since my temporary absences from home, for business trips or temporary separations, were too numerous to be remembered individually at this late date.

No. 18. Certain departures were for the purpose of temporary separations from defendant; also, I made a great many business trips. I am unable to assign individually to each absence the reason therefor, for the reason given in my answer to question No. 17.

No. 19. Yes.

No. 20. On one occasion, in 1938.

No. 21. Yes, on one occasion in 1938. I also proposed to her in 1946 that I should get a divorce.

250 No. 22. Yes, on one occasion in 1938.

No. 23. On a number of occasions, I cannot say exactly how many, after 1938.

No. 24. Mr. Thomas F. Fleming, 803 Sweet Building, Fort Lauderdale, Florida
Mr. Frederic J. Ball, Ring Building, Washington, D. C.
Mr. Edmund D. Campbell, 822 Southern Building, Washington, D. C.
Mr. Arthur Gomez-Trevino (See Question 54 for address)

No. 25. (1) In the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Broward County.

(2) The First Civil Court, Bravos District, City of Juarez, State of Chihuahua, Republic of Mexico.

* * * * * * * * * *

No. 30. It was so alleged in the complaint which my Florida counsel signed and filed.

No. 31. Yes.

No. 32. Yes.

No. 33. Yes.

* * *

251 No. 58. No. I will claim that such advice is privileged.

* * *

217

Opinion

The Court (Schweinhaut, J.): Gentlemen, I realize that the circumstances of this case are such as to make it of more than normal importance to the parties involved, and I have tried to give the matter my best thought, especially in view of that fact.

The question in the case is a simple one, since the fact of separation is not in dispute. Another fact that is not in dispute is that Mrs. Uline has never consented to a divorce, never has wanted a divorce and doesn't want one now, and has always, I think, been willing and had the desire to resume marital relations with her husband.

The question, as I say, is simple. Has there been, notwithstanding those circumstances an acquiescence in the existent separation, an acquiescence as contemplated by the decisions on this subject in this jurisdiction?

I could wish that the solution to the question was as simple as the question itself. I have not found it simple. However, I do not believe that as a matter of law a desire not to be divorced and a willingness to resume marital relations excludes the fact of acquiescence and acceptance, however reluctant, of a reality.

I think the law requires, as I view the cases, some-
218 thing more than a willingness to resume marital re-
lations, something more than a desire not to be di-
vorced.

It requires, I think, a real effort, and a sustained effort to bring about the resumption of marital relations. That effort or those efforts may be made in many ways.

There is no yardstick that either counsel or the Court have been able to find which clearly tells what it is the wife, for instance, must do to negative the existence of acquiescence. Surely she must do something.

In this case it is my opinion that the efforts made by Mrs. Uline, for whatever reason, have been somewhat desultory and I think inadequate. She made generalizations in her testimony, which is understandable, but I think it is fairly clear her efforts were rather generalized and sporadic, rather than specific, and sustained and continued.

They have, for instance, two daughters. They have a grandson and a granddaughter. There is no evidence before this Court, whatever the fact may be, that any effort was made by Mrs. Uline to procure what would seem to me to be the most effective means, far more effective, in the very nature of things, than her own efforts could have been, to engage the most effective assistance possible,
namely, the daughters of her husband and the grand-
219 children of her husband. There is no evidence that
that was ever attempted, and the efforts that Mrs. Uline made on her own behalf were more or less casual in their nature and character, and we have a period of three years, roughly—apparently it is not too clear as to exactly how long—but apparently three years when Mrs. Uline was spending some two or three months in each of those years here, as she put it, one to two months as her grandson put it, in the home here in Washington of the daughter, and during that period of time, when in close proximity to her husband, rather than separated by many miles and resorting only to the mails, while in close proximith within reach, in the same city, and through her own child and grandchildren she made no effort whatever to see her husband and to try to bring them back together.

I think the reasonable explanation for that was she felt it was hopeless and had known it was hopeless for many years but I don't know. I can't read her mind.

But I am persuaded there was not sufficient effort, not the sufficient effort the law has in contemplation made by her, and that therefore that amounts to an unwilling acquiescence over a long period of years, more than five, in what was clearly a reality.

This marriage has not existed in fact for twenty years
or more. I think definitely not since 1930, and pos-
220 sibly, or even probably for some period prior to
1930, and I think as time went on, however unhappy she was at the continued existence of this separation, she came to realize that hope of reconciliation had to be abandoned, and I think she did abandon it long ago and accepted the inevitable.

I think, therefore, I must grant the relief sought by the plaintiff.

* * * * * * * * * *

249 Filed Dec. 18, 1942

Findings of Fact and Conclusions of Law

Upon consideration of the pleadings filed and the evidence adduced at the hearing of this action, the court hereby makes and enters the following

Findings of Fact

1. The plaintiff and defendant were married in Cleveland, Ohio, on June 18, 1895. There were two children born of said marriage, both of whom are adults and who are now living, namely, Myrtle Uline Pratt and Hazel Uline Capron. There are also two adult grandchildren.

2. For ten years or more prior to March 1, 1930, plaintiff and defendant lived under the same roof in Cleveland, Ohio, but they had probably not cohabited and were living separate lives for several years prior to March 1, 1930.

3. On or about March 1, 1930, the plaintiff left the residence of plaintiff and defendant in Cleveland and moved to Washington, D. C., where he has ever since resided, separate and apart from the defendant, and has always been unwilling to resume his marital status with the defendant.

4. When plaintiff left Cleveland in 1930, and for several years thereafter, defendant besought plaintiff that she might come to Washington and live with him again, but plaintiff refused.

260 5. Shortly after plaintiff left Cleveland and came to Washington, the defendant moved her residence to Toledo, Ohio, in which city her daughter Hazel Uline Capron then lived. Thereafter defendant continued to reside in Toledo until the year 1949, when she moved to Detroit, Michigan, in which city her daughter Myrtle Uline Pratt resides. Defendant has continued since that time to reside in Detroit.

6. At or about the year 1938 the defendant abandoned hope of reconciliation with the plaintiff and has thereafter reluctantly recognized their permanent separation as a reality, although she has always continued to oppose plaintiff's suggestions for a divorce, and in her own mind has always desired and been willing to resume the marital status.

7. Such efforts as defendant has made to effect a reconciliation have been generalized and sporadic rather than specific, sustained and continuous. She made no effort through her daughters or grandchildren to effect a reconciliation.

8. On January 30, 1950 and on March 23, 1950, plaintiff filed separate suits for divorce against the defendant in the State of Florida. Both alleged desertion by the wife of the husband. Each was dismissed by the husband without hearing on the merits, the last suit being dismissed on August 24, 1950.

9. On July 5, 1950, the plaintiff, while a resident of the District of Columbia, obtained in the Republic of Mexico a decree of divorce from the defendant and on the same day went through a marriage ceremony with Elva Houseman in Mexico, and they have been living since that time in the District of Columbia as husband and wife.

10. Defendant is dependent upon plaintiff for support.

11. Reasonable alimony for the defendant is $8,400 per year.

12. The reasonable value of the services rendered by defendant's attorney in this proceeding and in a pending

261 maintenance proceeding between the parties in this Court (C.A. 1491-47) not compensated for to date, is $7,500.

Based upon the foregoing findings of fact the Court hereby makes and enters the following

Conclusions of Law

1. The Court has jurisdiction of this action.

2. The decree of divorce granted to the husband by the Republic of Mexico, on July 5, 1950, is null, void and of no effect.

3. Plaintiff is entitled to a decree and judgment of divorce *a vinculo matrimonii* from the defendant on the ground of voluntary separation from bed and board for five consecutive years without cohabitation.

4. Plaintiff should be required to pay reasonable alimony to the defendant as long as she lives, such payments to be a charge on his estate if he should predecease her.

5. Plaintiff should be required to pay the reasonable counsel fees of defendant's attorney in these proceedings and in the pending maintenance proceedings between the same parties.

By the Court

H. A. Schweinhaut
Judge

* * * * * * * * * *

262 Filed Dec. 18, 1952

Final Judgment for Divorce a Vinculo Matrimonii

This action came on to be heard at this term and upon consideration of the pleadings and testimony, and the Court having made and entered its Findings of Fact and Conclusions of Law herein, it is this 18th day of December, 1952,

ADJUDGED, ORDERED and DECREED as follows:

1. That plaintiff Migiel J. Uline be and he is hereby granted a divorce *a vinculo matrimonii* from the defendant Carolyn Eierman Uline; provided that this decree shall not be effective to dissolve the marriage of the parties until the expiration of the time allowed for taking an appeal, nor until the final disposition of any appeal taken, nor in any event shall this decree become absolute and take effect until the expiration of six months from the date hereof.

2. The plaintiff shall pay to the defendant as permanent alimony the sum of $700 per month, in semi-monthly installments of $350 each on the first and fifteenth day of each month, beginning for the first payment on January 15, 1953. Said payments shall continue to be made by the plaintiff as long as the defendant lives, and in the event the plaintiff shall predecease the defendant, such payments shall continue to be made by plaintiff's estate and shall be a charge and lien against said estate.

3. It appearing just and the plaintiff having agreed thereto, the plaintiff, Migiel J. Uline, his agents, 263 servants, employees and all persons in active concert or participation with him who shall receive actual notice of this order are hereby permanently restrained and enjoined from making any disposition of his property, the effect of which would be to endanger the security of the payments hereinabove provided to be made to the defendant by him and by his estate.

4. The plaintiff shall pay to James F. Reilly as attorney's fees for his services to date, as attorney for the defendant in this action and in Civil Action No. 1491-47 in this Court, the sum of $7,500; and judgment is hereby granted against the plaintiff for said sum and said James F. Reilly shall have execution thereon according to law.

5. Court costs shall be paid by the plaintiff.

By the Court

H. A. SCHWEINHAUT
Judge

I hereby consent and agree that the alimony provisions of the above decree shall be binding upon me, my heirs, administrators and assigns, and shall be a charge and lien upon my estate and paid to Carolyn Eierman Uline so long as she shall live, and I also consent and agree to the injunction provision of paragraph three hereof.

M. J. ULINE

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264 Filed Jan. 5, 1953

Notice of Appeal

Notice is hereby given this 5th day of January, 1953, that Carolyn Eierman Uline, defendant herein, hereby appeals to the United States Court of Appeals for the District of Columbia from so much of the judgment of this Court entered on the 18th day of December, 1952 in favor of Migiel J. Uline, plaintiff, as grants a decree of divorce a vinculo matrimonii against said Carolyn Eierman Uline.

JAMES F. REILLY
Attorney for Defendant

James F. Reilly
821 15th Street, N. W.
Washington, D. C.

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS

3 The Court: Are there any witnesses here, gentlemen, on either side, except the parties?

Mr. Campbell: We have two witnesses, Your Honor. Both parties agreed they need not be excluded unless Your Honor wishes.

The Court: Who represents the plaintiff?

Mr. Campbell: I do, Your Honor.

The Court: Perhaps it would help me if you would make a brief statement in the matter.

Mr. Campbell: This is a suit for divorce by Migiel Uline against his wife, or, shall I say, his former wife, depending upon whether his second marriage is valid or not. We do not believe it is.

Mr. Uline has been married a second time following a Mexican divorce. He is now asking this Court for a divorce from his first wife. I will need to give Your Honor some of the facts in connection with it.

The Court: Is this for five years voluntary separation?

Mr. Campbell: Five years voluntary separation. I should say to Your Honor both parties are in their middle seventies. I should say further to Your Honor that as a member of the Bar and Mr. Reilly as a member of the Bar, we both recognize the seriousness of our responsibility in
bringing this type of case in before this Court at this
4 time, and with the parties at the ages which they are.
We both sought by every means in our power to avoid the necessity of coming into court with this proceeding.

I should also say to Your Honor we are in the very unusual situation of having me present this case to the Court without the physical presence of the plaintiff here, and I would like to explain that, and ask Your Honor to proceed with the case as it is and give Your Honor the reasons for it.

This suit was filed in 1951, the 10th of February, 1951.

Mr. Uline at that time was suffering to some extent from a heart condition. Mrs. Uline, as Your Honor can see here, has also not been well. We moved to advance the case. The defendant's counsel opposed the advancement of the case at that time on the ground of Mrs. Carolyn Uline's health. The Court declined to advance the case. The case came on for hearing in January or February of this year. At that time we were met again by a motion on behalf of the defendant to continue it on the ground of her health. The Court granted that motion.

Secondly, in the spring of that year Mrs. Carolyn Uline suffered a broken hip, and again on motion of defendant's counsel the Court postponed it until the fall of this year.

Meanwhile, Mr. Uline had this fall a series of coronary attacks. He is at present confined to his bed. I have a letter from his physician stating that it is physically
5 impracticable for him to be here, that it would be
very dangerous to his life to be here and yet it appears in my conversations with the physician, and we have had two physicians there, that there is no real likelihood that Mr. Uline will be in a position in the future to actually physically appear in court.

It is, therefore, with reluctance that I ask Your Honor to proceed. We will proceed on the basis of the record which we have, and I would like to take Mrs. Carolyn Uline's own testimony before Your Honor.

The Court: Has his testimony been taken?

Mr. Campbell: His testimony has not been taken. We have hoped and expected he would be here, as I say. It wasn't until Friday of last week that I learned definitely from the doctor he was completely unwilling for him to come. It is my hope that we hear first this testimony this testimony and if Mr. Reilly should insist under the rules of the right to examine Mr. Uline, that the case may be adjourned long enough for his deposition to be taken at his home. . .

The Court: How do you propose to establish your case without his presence?

Mr. Campbell: I think I can establish it from the records, and from Mrs. Carolyn Uline's testimony. Your Honor will see as the case develops that there is no possibility of any collusion.

6 The Court: Yes.

Mr. Campbell: As the case develops Your Honor will see that the parties have not been getting along for many years, so that there is no possibility of that. I believe we will be able to develop that.

I would like to discuss briefly for a few minutes the case. I believe it will be helpful.

The parties were married in Cleveland in 1895. They have two children, both of them married. They never got along well, as the record will show. They had a separation for eight or ten months some time between 1910 and 1920, and in 1930 they permanently and finally separated. They have not been living together, have never spent a night together, never lived together at all for over 22 years.

They were married in Cleveland. Mr. Uline left Mrs. Uline and came to Washington. The record will show, I believe, Mrs. Uline wanted to come. He came to Washington. As to whether Mr. Uline deserted Mrs. Uline, or whether it was a constructive desertion on his part has been the subject of other litigation and is not now necessarily before the Court. I pass that. I think it is wholly immaterial in determining the issues in this case.

The Court: On the theory however it began—

Mr. Campbell: However it began, within the meaning of the Parks case, and subsequent cases of acquiescence in a separation.

7 The Court: Yes.

Mr. Campbell: Now, the record will show that in 1953 Mrs. Uline requested—

Mr. Reilly: Not 1953.

Mr. Campbell: 1933, Mrs. Uline requested she be permitted to rejoin Mr. Uline. I think, though, after that date you will find the record silent as to any attempt on her part, any affirmative attempt—I don't know what her indirect feelings may have been, her personal feelings—to rejoin Mr. Uline.

Your Honor will find from the record there was some correspondence between the parties in the early days; that in 1938 Mr. Uline wanted to get a divorce in Reno, which did not actually go through.

There was an arrangement made between the parties for a definite maintenance, $40, $50, $60 a week.

In 1946 Mrs. Uline retained counsel, possibly before then, but in 1946 she had counsel discuss with Mr. Uline the question of permanent maintenance.

In 1947 Mr. Uline proposed to institute Florida divorce proceedings, whereupon almost immediately Mrs. Carolyn Uline countered with maintenance proceedings in this court. In those maintenance proceedings she sought, not a reconciliation, but permanent maintenance. And in that
8 she recited that she was residing in Toledo, and he
was residing in Washington.

The Court: That was a separate suit, not this one?

Mr. Campbell: That is a separate suit which has been brought and on which a consent judgment—after testimony was taken—was finally entered in the early part of 1950. That judgment provided for permanent maintenance.

The record will further show immediately after that Mr. Uline proceeded to institute a suit for divorce in Florida against Mrs. Carolyn Uline and claimed Florida to be his residence, although Mr. Reilly will concede Florida was not his residence, the only question going to the question of good faith in making the charge. There is no question Mr. Uline lived in the District of Columbia, has been domiciled in the District of Columbia for the past 22 years.

Mrs. Uline filed an answer to that Florida suit, as the record will show, in which she did not refer to any possibility of reconciliation but counterclaimed for permanent alimony. Actually the suit was merely dismissed without prejudice.

Mr. Uline obtained a Mexican divorce in the summer of 1950 and married the lady who has been taking care of him and with whom he has been living since that time.

Mrs. Uline filed another suit in Florida, again Mrs. Carolyn Uline, seeking to enjoin Mrs. Elva House-
9 man Uline, the purported second wife from holding herself out as the wife of Mr. Uline, but again making no offer—

The Court: Where was that?

Mr. Campbell: —again no effort at reconciliation. That was filed in Florida.

This case came on for hearing. As I say, it is a most unhappy situation for counsel on both sides to be in. Both parties are ill.

Mr. Uline is, as Your Honor probably knows, the proprietor of the M. J. Uline Company, which owns a large ice business and arena here. I want to make it perfectly clear to Your Honor he is prepared to do whatever is proper and appropriate in the way of permanent alimony, and is prepared, and I would like to make this proffer right now to Your Honor, he is prepared to meet any decree Your Honor might enter with respect to permanent alimony operating against his estate, so that if he should predecease Mrs. Uline it will not operate to cut her off from the alimony which she may be entitled to during the rest of her life, and it has reached the stage where the physicians have told me it is of the utmost importance for peace of mind in the remaining time that he has here that this matter be brought on for hearing, and it is for that reason I am reluctantly pressing this case, confident that the record will bear out our position he is entitled to the divorce on
10 the ground of five-year voluntary separation.

Mr. Reilly: If Your Honor please, our position is this, that at no time has Mrs. Carolyn Uline acquiesced or consented to or resigned herself to be anything but the wife of Mr. Uline.

Back in 1930 I think the evidence will show Mr. Uline left Cleveland, Ohio, and came to the District of Columbia, perhaps it was Toledo, Ohio. Then he entered into a business enterprise in the District of Columbia, and he told his wife he did not want her to come with him.

Shortly thereafter he became ill in the District of Columbia and she came here to see him and be with him. He told her to return to Ohio. Over the years from time to time Mrs. Uline has written to Mr. Uline, and by Mrs. Uline I mean the lady on my right, speaking to him about his duty as a husband and her duty as a wife.

Further, she has stated within the last two or three years, in this Court, in depositions, that she was ready, willing and able to return to him.

Just so I can't be mistaken on that, before Mr. Justice McLaughlin of this Court, February 6, 1950, on page 22 of the record I asked her this question, and that was on the maintenance:

“Are you now ready, willing and able to resume marital relations with him?”

11 This was before he married.

“I am.

“Have you ever at any time threatened to institute a suit for divorce against him?

“Answer: No.

“Question: As a result of these letters that you received from him as well as the letters you received from his attorneys in Florida was it necessary for you to consult counsel?

That was on February 6.

On February 1, 1950, we were taking the deposition of Mr. Uline, the present plaintiff, in the office of his then counsel, Mr. Fred Ball, and we asked him whether he was willing to resume marital relations with his wife. That is on page 42 of the record. Page 40 of the deposition.

“Didn't she ask you if she could come to the District of Columbia with you?

“Answer: No, sir.

“Question: Did you tell her she should not come?

“Answer: No, sir.

“Question: Would you have brought her to the District of Columbia with you?

“Answer: I do not think so.”

Again I asked him, and this was on February 1, 1950:

“Are you willing now that Mrs. Uline should re-
12 sume marital relations with you?

“Answer: No, sir; it is impossible to live with her.”

February, 1950.

On January 24, 1950, because of the physical ailments of these parties the deposition of Mrs. Uline was taken in the previous maintenance suit and this was done in Detroit, Michigan. On page 88 of that testimony she was asked by Mr. Uline's counsel whether she was willing to return to him, and she said: “Yes; I am. He is my husband.”

Mr. Uline recently, four years ago, went to Florida and attempted to obtain a divorce from Mrs. Uline in Florida. It is rather interesting to note that in that case he maintained that Mrs. Uline had deserted him, and the reason for that is that as liberal as the divorce laws are in Florida, there is no ground of voluntary separation. He alleged he was a resident of Florida and then that Mrs. Uline had deserted him. We contested that case. Then we filed a suit in the District of Columbia asking for maintenance and asking for an injunction to prevent him from getting a divorce in Florida or any other place.

Mr. Campbell: If Mr. Reilly won't object to me interrupting, he is a little wrong on his dates. There was a letter in a suit which threatened a divorce in Florida in 1947,
but actually litigation was not instituted until shortly
13 after the consent judgment in the maintenance suit.

Mr. Reilly: You are wrong, because there have been two Florida suits for divorce.

Mr. Campbell: I beg your pardon.

Mr. Reilly: Let me finish, and I may clarify it. Mr. Campbell is correct to this extent, that there was a letter sent asking if the parties couldn't get together and agree to a Florida divorce. Then she filed suit for an injunction and for maintenance in the District of Columbia. Mr. Uline filed a suit for divorce in Florida.

Then when the matter came up in the District of Columbia, two or three days before the date we took his deposition to see whether or not he was a resident of Florida. On his deposition he swore that he was a resident of Florida, and this is February 1, 1950. I think, then, on advice of counsel he dismissed that first suit. That is the chronology of it, Mr. Campbell.

We had the maintenance hearing before Judge McLaughlin of this Court, and after two days of testimony an order was entered directing Mr. Uline, with the consent of all counsel and all parties, to pay $112.50 per week. We dismissed, then, the injunction proceeding. And the reason we did it is you couldn't get a permanent injunction to prohibit a man from changing his residence. He could do that any time he wanted to.

14 Thereafter Mr. Uline again filed suit in Florida asking for divorce, and again on the ground Mrs. Uline had deserted. The law was still the same in Florida, voluntary separation, there is no such ground. And there was a counter suit in Florida to that, not asking for divorce, because that Mrs. Uline has never entertained for a moment.

Then Mr. Uline goes to Mexico and he gets a divorce in Mexico. On this same day that he obtained the divorce in Mexico he married Elva Houseman, the lady that had been with him for a good many years.

He came back to the District of Columbia and when he got able counsel, he has had able counsel all along, counsel then filed suit in the District of Columbia on five years voluntary separation, saying that the Mexican divorce was invalid. Among the many things Mr. Campbell said was that Mr. Uline was prepared to do anything that is necessary insofar as permanent alimony is concerned. I dispute that, and I dispute it rather seriously, for this reason. Mrs. Uline broke a hip in April of last year. We filed in the maintenance action a motion to increase the maintenance because of the necessitous circumstances incident to her illness. We asked for an increase to $200 a week, and for extraordinary medical expenses. That was opposed rather seriously. It consequently came before Judge Matthews of this Court and she allowed $200 a week plus $4,000 for extraordinary medical, hospitalization and nurse care for his old lady when she was in the hospital. Mr. Uline has not paid it. He has taken, as he has a perfect right to do, that case to the Court of Appeals and has put a supersedeas bond up to keep from paying it. He has a right to do that, but he has no right to say that. That is not so.

We do not believe, and we have much testimony to show, that Mrs. Uline ever acquiesced or even resigned herself to divorce. Over the years she has written to him, at least at Christmas time and on birthdays. She is even now, notwithstanding all this, she is ready to go back to him because she feels it is her place as a wife under the vows she made to be with him, and he says he will have nothing to do with her. I know Mr. Uline is ill at the present time. He has had heart attacks before. I am most anxious that the Court personally observe Mr. Uline in answering some of the questions that he must answer to show that this was a voluntary acquiescence of voluntary separation and I certainly object most strenuously to the Court granting any sort of relief to Mr. Uline without personally seeing him, whether it is in this courtroom, or wherever you may wish to do it and I do not wish the cold record of a deposition to be before Your Honor, because I have had some experience with Mr. Uline and I think we should go forward in

16 the regular way, present our case as it must be presented, but under no circumstances do we wish the absence of Mr. Uline to be considered as an understanding. Under the circumstances presently before the Court at the time his testimony is taken I would like to have Your Honor see him.

* * * * * * * * * *

17 **Elizabeth Rothgeb Stine** was called as a witness by counsel for the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Campbell:

Q. State your name, please. A. Elizabeth Rothgeb Stine.

Q. Where do you reside? A. 5526 Eighteenth Road, North, Arlington.

18 Q. You are employed by the M. J. Uline Company? A. I am.

Q. How long have you been so employed? A. Twenty-one years.

Q. Since 1931? A. Since 1931.

Q. In what capacity? A. As executive vice president and secretary of the corporation.

Q. In that capacity have you had close daily contact with Mr. M. J. Uline, the plaintiff in this case? A. Yes.

Q. Can you tell me whether or not during this entire period the District of Columbia has been his home? A. It has been.

Q. And has he lived here during that entire period? A. Yes, except for his frequent trips to Florida.

Q. As far as his permanent home is concerned, the District of Columbia has always been his home? A. Yes; it is.

Mr. Campbell: That is all I have from this witness.

Cross Examination

By Mr. Reilly:

Q. The District of Columbia is his residence. A. Yes.

19 Q. And his domicile? A. Yes.

Q. And I understand you have been in close daily contact with him. A. I have been.

Q. When did you last see him? A. Friday.

Q. Where? A. At his home, in his bedroom.

Q. Does he call the office? A. He does not.

Q. Does he talk business with you when you are at his home? A. When I go out there if I have any questions, if he is able I talk to him about the business. Otherwise I don't go.

Q. Has he always maintained the District of Columbia as his residence? A. Except the time he tried to establish Florida as his legal residence to get a divorce.

Q. You were present, were you not, at the time his deposition was taken at the office of Mr. Fred Ball, and Mr. Uline was present also, on February 1, 1950, just before the maintenance action came up here, and do you remember Mr. Uline being examiner by questions from

20 me? A. Yes.

Q. Do you remember me asking him, "Are you a resident of the District of Columbia any other place?"

His answer: "I am a resident of Fort Lauderdale, Florida."

A. Mr. Uline did try to establish Florida as his legal residence in order to get a divorce.

Q. Do you remember my continuing and asking, "How long have you been a resident of Florida?" and he said, "A little over three months now although I have been going there for the past ten years? A. That is correct.

Q. I am going to read some questions and answers and you tell me whether they are correct.

Mr. Campbell: I understand Mr. Reilly is not contesting the District of Columbia is the domicile and residence of this plaintiff.

Mr. Reilly: I think it is, but this goes to Mr. Uline's credibility.

Mr. Campbell: If that is the purpose I suggest this is not the time or place. I have no objection to reading that entire deposition, but simply it isn't the subject of cross examination of this witness.

The Court: I shouldn't think it would be.

Mr. Reilly: Yes, your Honor.

21 The Court: I sustain the objection.

• • • • • • • • • •

22 Thereupon, **Carolyn Eierman Uline**, the defendant herein, was called as a witness and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Campbell:

Q. You are Mrs. Carolyn Uline? A. I am.

Q. You are the defendant in this case? A. That is right; yes.

Mr. Reilly: You will have to speak up so Judge Schweinhaut can hear you.

By Mr. Campbell:

Q. Where do you reside? A. 1913 West McNichols Road, Detroit, Michigan.

Q. You have been living there for how long? A. Well, it is going on three years, now.

Q. Prior to that time did you live in Toledo? A. Toledo; that is right.

Q. How old are you? A. Seventy-five.

Q. Seventy-five. You and Mr. Migiel J. Uline were marmarried, were you, in Cleveland, June 18, 1895?

23 A. That is right.

Q. Do you have two children, one Myrtle Uline Pratt and one Hazel Uline Capron? A. That is right.

Q. They both live in Detroit? A. That is right.

Q. Now, did Mr. Uline and you ever separate prior to 1930? A. Yes; we did. He left, and I didn't know where he was. He just left. He didn't say where he was going or what he was going to do.

Q. How long a period did that separation last A. I don't just remember. I believe about seven or eight months.

Q. Was that some time between 1910 and 1920? A. I believe it was, yes.

Mr. Reilly: If Your Honor please, I believe the testimony of the witness must be confined to the allegations of the complaint that there was a five-year voluntary separation.

The Court: I think this is relevant, or at least it could be. I don't know if it will turn out to be. The answer may stand.

By Mr. Campbell:

Q. Where were you and Mr. Uline living in 1930
24 before he came to Washington? A. In Cleveland,
Ohio.

Q. What business was he engaged in there? A. He had his own business, his own ice company in Cleveland, but he sold it some time before he went to Washington, but just when, I can't say.

Q. Did there come a time about 1930 when he left you and went to Washington? A. Yes. About a month before he left someone told me he was building an ice plant in Washington. I said, "I don't believe it." He never mentioned it to me. I didn't know it. A week before he left he said to me, "The best thing you can do is to find a cheaper and smaller place.

Q. My only question is he did leave you and move to Washington? A. Yes; he did.

Q. Did he leave you in Cleveland? A. Yes; he did.

Q. And that was on or about March, 1930, is that correct? A. Well, I don't know. It may have been April.

Q. In the spring of 1930? A. That is right. That is right.

Q. Since he moved to Washington in the spring of 1930, have you and Mr. Uline ever lived as husband and
25 wife? A. No.

Q. Have you ever spent the night under the same roof since that date? A. No.

Q. Now, you wanted to come to Washington with him, did you not? A. I did, very much.

Q. He didn't want you to come? A. No; he commanded me to go back to Toledo. Well, this was when—I am getting this confused. He told me this when he was ill. I went to see him in Washington, after we were separated.

Q. That was after you had moved to Toledo? A. That is right.

Q. When Mr. Uline moved to Washington, you say he told you not to come with him? A. He didn't tell me that way. As I started to tell you, he said, "You better get a cheaper and smaller place."

Q. In Cleveland? A. I said, "Oh, does that mean that I am not going with you?" He says, "Yes."

Q. After he moved to Washington in 1930, did you stay on in Cleveland? A. Yes.

26 Q. Cleveland had been your home? A. The day he left he gave me $80, a check, and he said, "This will do you for two weeks, and I will pay a month's rent." He said, "You must be out at the end of the month," and I said, "I will."

Q. He told you to get a smaller place in Cleveland? A. He didn't say where.

Q. Actually you very soon after that moved to Toledo, did you not? A. Yes; because I had to be out—

Q. My question is, did you move? A. Oh, yes, I did.

Q. Was that in 1930, soon after he left? A. Yes.

Q. You didn't tell him beforehand you were going to Toledo? A. No; I didn't mention that. I didn't know anything about it.

Q. When you finally decided to move to Toledo, you did not tell him, in fact? A. After I found a place I told him I had found a place.

Q. After you had moved to Toledo? A. No; I was still in Cleveland. I told him I had found a place and I would move, and asked him if he would pay the bill for
27 moving, which was $50. He said he would, and he
sent me a $50 check.

Q. You moved to Toledo? A. I moved to Toledo.

Q. You moved into an apartment in Toledo? A. Yes; a two-family apartment.

Q. You have a daughter living in Toledo? A. I had both daughters living in Toledo at that time.

Q. You did not go to live with either of your daughters, did you? A. No; I did not.

Q. Did Mr. Uline own your own residence in Toledo? A. It was a summer cottage.

Q. Summer cottage? A. Yes.

Q. You did not go into that, you went into an apartment in Toledo? A. Yes, but he owned that place, but it wasn't mine at that time.

Q. Did you continue to live in that apartment in Toledo from the time you moved there in 1930 until you moved to Detroit in 1949? A. No; we moved from there—we moved back to Cleveland again.

Q. You say, "we". Who is "we"? A. I am getting confused. I am sorry.

28 Mr. Reilly: Mrs. Uline, as Your Honor knows, is quite elderly.

The Court: That is all right.

By Mr. Campbell:

Q. I don't want to confuse you. You take your time in answering. We will refer now to the time after Mr. Uline moved to Washington, you say. A. Yes.

Q. Then you took up an apartment in Toledo, isn't that correct? You moved to Toledo? A. We moved back to Cleveland one time.

Q. Wasn't that before Mr. Uline left you? A. Yes, yes.

Q. I am trying to get after Mr. Uline left. After Mr. Uline left you moved into this apartment in Toledo, didn't you? A. Yes, sir; I did.

Q. Did you continue to live in that apartment in Toledo from that time in 1930 until you moved to Detroit in 1949? A. That is right.

Q. About 19 years, roughly? A. No; I think it was about nine years. Maybe I am wrong.

Q. You moved there the year Mr. Uline moved to
29 Washington? A. That is right.

Q. Didn't you continue to live there until about three years ago? A. Where?

Q. In Toledo. A. Yes.

The Court: And then you went to Detroit about three years ago?

The Witness: That is right. That is right.

Mr. Campbell: Most of this evidence is indirectly in, in records in other places. I would be very happy if the witness is confused at any time if Mr. Reilly wants to correct any misstatement in order that we can get it straight.

By Mr. Campbell:

Q. Now, soon after Mr. Uline came to Washington in 1930, he got sick, did he not? A. Yes; he did.

Q. You then came to Washington to see him? A. I did.

Q. He was in the hospital? A. Yes; he was.

Q. Did he then tell you, as I think your counsel has said to the Court, he didn't want you to stay there? A. Well, when I came in he said, "What are you doing
30 here?" I said, "You are ill and I just thought I
would have to be here." He said, "I want you to go right back to Toledo." But I stayed two or three days. Then I went on home.

Q. Then you went home? A. That is right.

Q. That was the year after Mr. Uline came to Washington? A. It was the same year, I think?

Q. He came to Washington in 1930? A. I think it was along in April when he became so very ill.

Q. After that occasion, Mrs. Uline, did you ever see Mr. Uline again until your maintenance suit came up for trial in the District of Columbia? A. I saw him at Christmas time several times. He came to the daughters' home for Christmas.

Q. When was that? A. Shortly after he left.

Q. That was within a year or two after he left? A. I think so, yes. I think so.

Q. After those first visits the year or so after he left, did you ever see him again until your maintenance suit came up in 1950? A. I saw him at my granddaughter's wedding.

Q. Where was that? A. In Detroit.

31 Q. And when was that, how long ago was that? A. I am trying to think. About seven years.

Q. The first wedding or the second? A. I am putting the two weddings together, about seven years.

Q. About seven years ago? A. About that. I am not positive about it. I think that is about right.

Q. Did you have any particular conversation with him then? A. Yes; I talked to him.

Q. About your granddaughter? A. We talked about different things. He was—he talked, right along.

Q. What was the general subject matter of your conversation? A. I don't just recall. About different things that were going on at the wedding, I believe.

Q. Just small talk about the wedding? A. That is right.

Q. That is all you talked about? A. At that time, yes.

Q. Have you ever seen him on any— A. I don't remember. I believe I did say something to him about letting me come to Washington.

32 Q. Mrs. Uline, at that time did you say that? A. I am not sure.

Q. You are not sure? A. I knew I saw him somewhere and asked him. I am a litle confused. I am a little confused.

Q. Let me refresh your recollection. Wasn't that conversation had with Mr. Uline when he came to Toledo to visit your family in the early '30s, to visit your daughters? A. I just can't recall it. I can't recall it. I am not so sure when it was, but I know one time we met with the daughters, and like that, and I would ask him if he would let me come to Washington.

Q. After Mr. Uline moved to Washington, did you and he make an arrangement by which he was to send you $40 a week? A. No; that wasn't then. When he left, the day he left he gave me $80, a check, and said that was due for two weeks, and from that time on I was getting $40 a week. There was no arrangement made for that.

Q. There was an arrangement made later for it to be increased to $50? A. Yes; $50, which my granddaughter asked him for—he wouldn't—give me more—because the allowance was inadequate. It wasn't enough. A little later my oldest daughter asked him if he couldn't raise my allowance a little bit.

33 Q. Did you ask them to ask him? A. Oh, no. No.

Q. There came a time when you employed counsel to ask for additional maintenance, did there not? A. Yes; that was in 1950.

Mr. Campbell: May I ask counsel for the defendant if he has that letter from Uline to Mrs. Uline dated August 5, 1938, and one dated September, 1938, and then her reply to it?

* * * * * * * * * *

I offer a letter from Mr. Uline to Mrs. Uline, dated August 5, 1938, which Mr. Reilly will stipulate he received.

Mr. Reilly: I will so stipulate.

Mr. Campbell: "My Dear Carrie:

"Enclosed find check for $200.

"Some time ago both Billy and Patricia talked to me about an increase in your allowance. I told them both that that I believe your allowance enough and that if more was given, which I cannot afford, it would only go to your
own relatives, and especially to your sister Rose,
34 whom I hate.

"However, I realize that it is high time for me to make a will. All that I own now is stock in my company. If anything happened to me now, that is all you would get, and it is doubtful if it would pay dividends after I am gone.

"In order to make sure that you will be cared for for the rest of your days, I have arranged for the following, if you will do your part:

"1. I will pay you $250 per month as long as you live.

"2. I will arrange through a $40,000 insurance policy that you will be paid $250 per month for the rest of your life.

"3. You can do as you please with what you save or gain from your $250 per month, but you can get nothing whatever from my estate outside of that, as I want to make sure that nothing whatever goes to your relatives, and especially to Rose.

"4. In order to make sure of this, however, you must secure a divorce at once in Reno, Nevada, so as to get it over with quick.

"Please remember that all of this is done to be sure you
are cared for, that all our children be protected, and
35 most of all that your relatives cannot interfere with
my estate as they would.

"Naturally it would be an easy matter for me to get a divorce, as we have not lived together for eight years or more, but I much rather that you would unless you refuse, then I must.

"This arrangement would make you independent and still sure of your income.

"My will must be made and as soon as possible, so let me hear from you at once.

"Sincerely,

"M. J."

(Letter dated August 5, 1938 was marked and received in evidence as Plaintiff's Exhibit No. 1.)

Mr. Campbell: As Plaintiff's Exhibit 2, a letter from Mr. Uline to his wife dated September 1, 1938:

"Dear Carrie:

"Why don't you answer my last letter?

"Please remember that I have thought this over many times, and my way is the only way that is safe.

"If you inherited one-third of the stock and it did not pay dividends, what will you do for a living? That is very likely to happen without me. The other way you are protected for the rest of your life, and absolutely independent. I will never leave my estate so that Rose can get any part of it, so it is up to you.

36 "If you do not act I will have to act and that will not help you at all. However, I will give you two weeks more,

"Sincerely,

"M. J."

The Court: What is the date of that?

Mr. Campbell: That is September 1, 1938.

(Letter dated September 1, 1938 was marked and received in evidence as Plaintiff's Exhibit No. 2.)

By Mr. Campbell:

Q. Did you hear me read those letters? A. I did.

Q. You recall getting them? A. Yes; I do.

Q. After you got those letters did you consult counsel and make a reply and keep a copy of the reply? Do you recall?

The Court: Did you see a lawyer after you got those letters?

The Witness: Oh, no.

By Mr. Campbell:

Q. Not then? A. No, I did not.

Q. Let me call your attention to—I know you are trying to tell the truth. I just want to go over it easily.

37 The Court: If you would read her letter, it might refresh her recollection.

Mr. Reilly: If I might interrupt, I know of no counsel being obtained at that time. There may have been.

Mr. Campbell: May I talk off the record for a minute?

The Court: Yes.

(Discussion off the record.)

Mr. Reilly: When did you first get a lawyer, do you remember?

The Witness: Oh, that was when he asked me so many times to get a divorce.

The Court: Mrs. Uline, let us see if this helps you to remember.

The Witness: I beg your pardon?

The Court: Let us see if this helps you to remember. You say you do remember getting those two letters Mr. Campbell just read, and those letters urged you to get a divorce, and told you that an insurance policy was set up for you, and so on. At the time you got those letters, did you go to see a lawyer about them?

The Witness: I think that is when I did.

The Court: That is what Mr. Campbell meant.

The Witness: That is right.

The Court: That is what he wanted to know.

The Witness: That is right.

38 Mr. Campbell: May I offer in evidence a reply which she made to Mr. Uline's letter. It apparently is undated, but it was sent in 1938.

Mr. Reilly: What page?

Mr. Campbell: Page 15.

Mr. Reilly: I agree to it.

Mr. Campbell: And of which she apparently kept a copy. Let me read it and see if you can recall it.

"Dear Mike:"

I offer this as Plaintiff's Exhibit 3.

"Dear Mike:

"Your letter was such a shock to me that I could not write. After 36 years of married life, one does not terminate it by divorce. For the sake of our children, our grandchildren and our dignity, a divorce must not be. After all, my religious principles would not permit it—and neither should yours.

"You say you want a divorce because you want to make a will. Isn't it conceivable that I might die before you?

"I am very lonely and blue now. It is not pleasant at my age to live alone. The separation is of your choosing. Do not make me suffer more than I am now.

"Sincerely,

"Carrie."

39 (The letter referred to was marked and received in evidence as Plaintiff's Exhibit No. 3.)

By Mr. Campbell:

Q. Do you recall that? A. I wrote that, yes.

Q. Did you consult a lawyer about that and keep a copy? A. No; not when I wrote the letter. No.

Q. But you did afterward? A. I don't know whether it was afterwards. I think it was, but when he asked me to get a divorce, I did consult a lawyer in Toledo. I had to do something.

Q. Is that the law firm of— A. Shumaker—

Q. Frazier, Effler, Shumaker & Winn, which is a predecessor of the associate firm which now represents you in these proceedings?

The Court: At the time you wrote that letter back to Mr. Uline, did a lawyer suggest to you that is what you should say?

The Witness: Oh, no. wrote that of my own accord.

The Court: Did a lawyer tell you to keep a copy of it?

The Witness: No. No; he did not.

By Mr. Campbell:

Q. Mrs. Uline, you had an illness in 1940, in the
40 hospital, didn't you? A. Yes.

Q. And shortly prior to that time you consulted Mr. Harold Frazier of Toledo, Ohio. That is correct, isn't it? A. That is right.

Q. Did you ask Mr. Frazier to keep in touch with the Florida courts and other courts to see whether or not Mr. Uline was going to file a suit for divorce? A. I am not sure, but I believe I did. That has been some time ago.

Q. Did Mr. Frazier or Mr. Dunn negotiate with Mr. Uline, to your knowledge, for an increase in the maintenance payments he was sending you? A. Mr. Uline negotiated with my attorney?

Q. Yes. A. Not that I know of.

Q. Do you recall your attorney coming to Washington? A. Mr. Dunn went, yes.

Q. And he belonged to the same firm Mr. Frazier belonged to? A. That is right.

Q. Did he negotiate with Mr. Uline to raise your maintenance A. That I don't know.

Q. Do you recall that following your coming to Washington your allowance was raised to $60 a week,
41 and that you were paid $1,000 from Mr. Uline? A. Yes; that is right.

Q. Now, just following this letter in 1938 which has just been read and offered to the Court, did you write Mr. Uline any more letters? A. Oh, my, yes; many of them.

Q. Have you copies of any of them? A. Mr. Shumaker has them. I don't know whether Mr. Reilly has any now or not, but each Christmas I would send him a gift, and I would ask him if I could please come back. That was as late as 1949.

Q. Take your time. A. After that, when I found out they were living together in the Florida home, I didn't write him any more, but each Christmas I would send him a gift and note or letter and ask him if I could please maintain a home for him again.

Q. Mrs. Uline, actually you did come to Washington once or twice to see your daughter, Mrs. Pratt, did you not? A. Oh, yes. She lived there.

Q. In Washington.

The Court: Just a moment, Mr. Campbell. I think, Nurse, you might see if Mrs. Uline would like some water. Just leave it on that table.

Mr. Campbell: If I go too hard, you let me know.

By Mr. Campbell:

42 Q. She lived in Washington for a time? A. That is right; she did.

Q. When did she live in Washington? A. Now, let me see. She was married to Dr. Pratt twelve years. Twelve years ago she lived there, and I don't remember just how long.

Q. When you came to Washington to visit Mrs. Pratt you didn't see Mr. Uline, did you? A. Not there, no.

Q. On the occasions of your visits to Mrs. Pratt, you did not see Mr. Uline? A. Not in Washington.

Q. He was there, wasn't he, in Washington? A. Oh, yes.

Q. Did you make any effort to see him? A. I wanted to see him. I know one night I wanted to go to the Arena when it opened up. We had tickets. We thought he was going to send some tickets. Finally he sent someone to tell me not to come, because he would rather I wouldn't come for the first night. He was taking someone else that night. That was the reason he didn't want me to come.

Q. Did you ever call Mr. Uline up? A. No; I didn't call him up. I just wrote him.

43 Q. When you came to Washington you didn't call him on the phone or go to see him? A. No, I don't believe I did.

Q. You have a brother, Mr. Sam Eierman, haven't you?

The Court: What is that name?

Mr. Campbell: E-i-e-r-m-a-n.

By Mr. Campbell:

Q. Mr. Eierman worked at the M. J. Uline Company? A. Yes; he does.

Q. And he lives right across the street? A. He did live right across the street, but he moved because of colored folks going in there. He moved. I can't tell you where he lives now.

Q. But he did live right across the street from the Uline plant? A. Yes.

Q. And that was 10 or 12 years ago, possibly? A. All of that.

Q. And when you came to Washington to visit, you visited or took a meal with your brother, Mr. Sam Eierman, didn't you. A. Oh, yes.

Q. That, you say, is right across the street from the Uline Company. A. Yes.

44 Q. On that occasion did you cross the street and go to see Mr. Uline? A. No, I did not, because I did go over and sit in the car in the yard, and see if he would come and I could talk to him, but he did not, and I did not make any attempt. I did want to talk to him.

Q. But you didn't actually call him up? A. No.

Mr. Campbell: I want to offer in evidence as Plaintiff's Exhibit No. 4 a letter from Mr. Uline to Mrs. Uline dated June 18, 1946.

"Dear Carrie:

"Have been thinking a great deal lately as to how to divide my property and treat everyone alike.

"It must always be remembered that I still have a mortgage of nearly $400,000. As long as I live and stay healthy, there is no fear but that I will come out alright, but if anything should happen to me, which is very possible at my age, the mortgagee may take over and then no one would get anything. That would be dangerous for you.

"Therefore I have decided that I will obligate the company with a contract to pay you $325.00 (three hundred twenty-five dollars per month for life.) This however will be your only interest in my estate and therefore I demand the following:

45 "In order that I may be absolutely sure that you and your family do not interfere with the settlement of my estate should I die before you,—

"You must allow me to get a divorce at once without interference of any kind.

"Remember I do not intend to marry nor do I go with anyone nor do I have anyone in mind.

"You will receive plenty of money this way and I can dispose of my estate as I please.

"Kindly let me know from you on this at once.

"Sincerely yours,

"M. J. ULINE."

(Letter dated June 18, 1946, was marked and received in evidence as Plaintiff's Exhibit No. 4.)

By Mr. Campbell:

Q. You recall that letter, Mrs. Uline? A. Yes.

Q. You did not answer that, did you? A. No.

Q. You referred that to your counsel, did you not? A. That is right.

Mr. Campbell: I now offer in evidence as Plaintiff's Exhibit No. 5 a letter from the law firm of Fort Lauderdale, Florida. The firm's name is McCune, Hiaasen, Fleming & Kelley.

Mr. Reilly: No objection.

46 (Letter from McCune, Hiaasen, Fleming & Kelley was marked and received in evidence as Plaintiff's Exhibit No. 5.)

Mr. Campbell: It is addressed to Mrs. Uline.

"Dear Mrs. Uline:

"Your husband, Mr. M. J. Uline, has employed us to represent him in bringing a divorce suit against you.

"We have delayed bringing the suit until we could first bring up the matter with you, as it is Mr. Uline's desire to see that you are taken care of, and it is his plan to see that you are properly provided for at all times.

"We judge that you have an attorney in whom you have confidence, and it is our hope that you may present this letter to your attorney so that your attorney and the writer may get together, if possible, and settle all matters between you and Mr. Uline before suit is brought.

"We will await your reply for a few days before bringing suit. We beg to remain,

"Very truly yours,

"McCune, Hiaasen, Fleming & Kelley."

It is signed by Mr. Fleming of that firm.

Mr. Reilly: I believe that date was March 27, 1947.

Mr. Campbell: March 27, 1947.

Mr. Reilly: No objection.

The Court: Do you want to ask anything about
47 that letter?

By Mr. Campbell:

Q. You received that letter, did you? A. Yes; I did.

The Court: I will recess, but I thought I would wait.

Mr. Campbell: Just give me three or four more questions.

By Mr. Campbell:

Q. Did you upon receipt of that letter immediately refer it to your counsel? A. I did.

Q. And did your counsel and you then discuss the immediate filing of a complaint for maintenance and injunction in the District of Columbia? A. I don't know just when that was done. I couldn't answer that. It was done, yes.

Q. Here is a complaint for maintenance and injunction which was filed in this Court in the District of Columbia. I am in error as to the date. The date on which this complaint was sworn to was January 25, 1947, which is two months prior to that, but it was actually filed April 8, 1947, after that letter had been received.

The Court: Is this an appropriate time to recess?

Mr. Campbell: I think it would be, Your Honor.

The Court: Until 2 o'clock.

48 (Thereupon, at 12 o'clock noon, the luncheon recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION

(The trial was resumed at 2 o'clock p. m.)

The Court: All right, Mr. Campbell.

Thereupon, **Carolyn Eierman Uline** resumed the witness stand pursuant to the luncheon recess and testified further as follows:

Direct Examination (Resumed)

By Mr. Campbell:

Q. Mrs. Uline, when you consulted your counsel in Toledo, did you tell them Mr. Uline had a substantial estate? A. Yes; I did.

Q. And did you tell them you wanted an interest in that estate?

Mr. Reilly: I object to that as being immaterial.

The Court: I overrule the objection.

The Witness: That I wanted an interest?

By Mr. Campbell:

Q. That you wanted to maintain your interest in that estate? A. I don't believe I ever said that.

Mr. Campbell: If Your Honor please, I would
49 like to offer in evidence a statement which has been
served on me by counsel for the defendant, being an affidavit of Ross W. Shumaker, counsel for the defendant in Ohio, in which he sets out the services which he purports to have performed for Mrs. Uline as a basis for attorneys' fees being requested on behalf of Mrs. Uline in this case.

The Court: In the case I am now hearing?

Mr. Campbell: In the case now. The purpose of the proffer is not to show the value of the attorneys' fees, because that is a matter which which I do not wish to be bound, but to show the statement of services, the subject matter of the services purported to have been performed by counsel for the defendant.

Mr. Reilly: I will concede this instrument now offered by Mr. Campbell was submitted by the firm of Shumaker, Loop & Kendrick to her for services rendered by them to her in her marital difficulties with Mr. Uline. That began, as indicated, by an itemized statement made by them on July 24, 1946, and terminated October 2, 1952. I concede that they submitted that to her, that she received it, turned it over to me, and I submitted it to Mr. Campbell.

The Court: I am not too clear on why you think that is admissible.

Mr. Reilly: I would be very happy to have it in.

Mr. Campbell: I understand there is no objection.

50 The Court: In that case, I will have it in.

The Witness: Mr. Reilly—

Mr. Reilly: I can't talk to you now.

The Court: Yes, you can.

(Defendant conferred with her counsel off the record.)

(Affidavit of Ross W. Shumaker was marked and received in evidence as Plaintiff's Exhibit No. 6.)

Mr. Campbell: Shall I read that portion of this I am interested in?

The Court: If you wish.

Mr. Campbell: Mrs. Uline, as I read it, if it is incorrect, you can make a mental note of it and tell me later. This is an affidavit of Ross W. Shumaker.

"The State of Ohio
Lucas County

"Ross W. Shumaker, being first duly sworn, deposes and says:

"That he is a member of the law firm of Shumaker, Loop and Kendrick, Toledo, Ohio, and has personal knowledge of the facts hereinafter set forth. Said firm of Shumaker, Loop and Kendrick and its predecessors (hereinafter referred to as the 'Toledo firm') have performed the services for Mrs. Carolyn Eierman Uline hereinafter set forth, upon employment by here therefor, and is the
51 owner of all claims against her for the payment for said services.

"On or about July 25, 1946 said Carolyn Eierman Uline (hereinafter referred to as 'client' or 'Mrs. Uline') consulted the Toledo firm as to her relationship with her husband, Miguel J. Uline. She related that her said husband, a man of large wealth and income had, for a number of years, been paying her a grossly inadequate sum for her maintenance which consisted of irregular payments of about $40 per week supplemented with occasional additional amounts; that he was continually demanding that she obtain a divorce from him, and threatening to deprive her of any interest in his estate."

I would like to interrupt myself there.

Mrs. Uline, is that a correct statement so far?

The Witness: That is correct.

Mr. Campbell (continuing reading): "She instructed the Toledo firm to proceed by negotiation and/or suit to secure an adequate allowance of maintenance for her and to take any and all steps to protect her marital status and rights."

Is that correct?

The Witness: Yes.

Mr. Campbell (continuing): "The Toledo firm has continuously from the aforesaid date represented Mrs.
52 Uline as to all of said matters, and the services hereinafter referred to and set forth have been rendered pursuant to said employment.

"With the consent of Mrs. Uline the Toledo firm, on her behalf, engaged William E. Leahy, Esquire, and James F. Reilly, Esquire, attorneys of Washington, D. C., to assist them in all said matters in Washington, D. C. Mrs. Uline was then a resident of Toledo, Ohio, (later moving to Detroit, Michigan) and Mr. Uline was a resident of Washington, D. C. The Toledo firm then examined the law and facts relating to the matters aforesaid, and had negotiations with Mr. Uline in respect thereof. As a result of said negotiations, temporary relief was obtained for Mrs. Uline by an increase of Mr. Uline's payments to her to the sum of $60 per week, and the payment to her of an additional lump sum of $1,000."

Do you recall that?

The Witness: Yes; I did get that.

Mr. Campbell (continuing): "When no settlement could be secured with Mr. Uline, a suit was instituted by the filing of a complaint on April 8, 1947, by Mrs. Uline against Mr. Uline in the District Court of the United States for the District of Columbia, being Civil Action No. 1491-47 therein, by which Mrs. Uline sought an order for a reasonable allowance for her maintenance."

53 Mrs. Uline, do you recall the negotiations that were had with Mr. Uline for a settlement? Did they relate to the division of certain property interests between you?

The Witness: A settlement of property interests?

Mr. Campbell: Yes, that is a share of his estate. That is, a share of the stock in his company.

The Witness: I don't quite understand. I am a little confused on that.

Mr. Campbell: Your counsel, when you employed them in Toledo, did you instruct them to negotiate for adequate maintenance for you?

The Witness: With Mr. Uline?

Mr. Campbell: Yes, with Mr. Uline. Did you tell your counsel to negotiate with Mr. Uline so that you got adequately paid?

Mr. Reilly: Provided for.

The Witness: I know what you mean now, but I don't know whether I ever did that or not.

The Court: Did you tell your lawyers in Ohio, did you tell them in substance, however you may have put it, that what you wanted to accomplish was to get a share of his estate, of Mr. Uline's estate? That is the question you are being asked.

Mr. Campbell: That is the substance of it, yes, sir.

The Witness: Well, we wanted to have a settlement, if that is what you mean.

54 Mr. Campbell: A settlement.

The Witness: Well, I did ask for $200,000, and we would settle for that, but he made no reply on that. Now I understand. I didn't quite know what you meant.

Mr. Campbell: That is what I was trying to get at.

The Witness: He didn't reply to that at all. I never heard, nor did anyone else, what he would do. Evidently he didn't intend to do anything about it.

By Mr. Campbell:

Q. Were you trying to make a sort of so-called separation or settlement agreement? A. Separation agreement?

Q. Property settlement agreement. Do you recall that, Mrs. Uline? A. What you mean is to get some of his property, is that it?

Q. $200,00. A. Yes. Did we make the agreement?

Q. You were trying to get together with him on such an agreement? A. There was no agreement made that I know of.

Q. No; you were trying to negotiate such an agreement. A. That is right. That is right.

Q. But were unable to get together with him? A. That is right.

55 Q. Following that you did file this suit for permanent maintenance A. Yes.

Q. In the District of Columbia? A. That is right.

Mr. Campbell: I haven't finished with this affidavit. I think I should complete that.

"When no settlement could be secured with Mr. Uline, a suit was instituted by the filing of a complaint on April 8, 1947, by Mrs. Uline against Mr. Uline in the District Court for the United States for the District of Columbia, being Civil Action No. 1491-47 therein, by which Mrs. Uline sought an order for a reasonable allowance for her maintenance. A decree was entered in said Court in said cause, whereby the defendant was ordered to pay the plaintiff the sum of $112.50 per week for her maintenance and $4,500 for counsel fees, payable in two installments. The order for such counsel fees was later, by agreement of counsel, reduced to $4,000 payable in a cash lump sum."

The Court: I don't understand that. What was the reason?

Mr. Campbell: The $4,500 counsel fees, instead of $4,000. Later—

Mr. Reilly: We accepted $4,000. Isn't that the fact?

56 The Court: I didn't know to what it referred. That is all.

Mr. Campbell: That is all I care to read on that score. I offer the exhibit in evidence as Plaintiff's Exhibit No. 5.

The Court: 6—whatever it is.

Mr. Campbell: Then Exhibit 1 to the affidavit refers to the following entries in the year 1946.

"July 24. Conference with Carolyn Eierman Uline concerning marital problems (Mr. Shumaker and Mr. Kendrick).

"July 25. Further conference with Mrs. Uline; examination of papers; legal research"—

The Court: Why am I concerned with that?

Mr. Campbell: You are really not concerned with those particular duties. The only purpose, Your Honor, might be concerned with these exhibits, is that it all relates to Mrs. Uline. It refers to an attempt to arrive at a property settlement between the parties. I think I can just make that blanket statement without reading the details to Your Honor.

I would like to offer in evidence as Plaintiff's Exhibit 7 the complaint for maintenance and injunction subscribed and sworn to and filed in this Court by Carolyn Eireman Uline against Migiel J. Uline, who is the plaintiff in this case, being Civil Action No. 1491-47, which was subscribed and sworn to on January 25, 1947, and which was filed April 8, 1947. 57

The purpose of offering this complaint, if Your Honor please, is to show again by the conduct of the defendant the relief which she was seeking, and the complaint requests permanent maintenance.

The Court: Did she sign it hereself?

Mr. Campbell: She signed and swore to it.

The Court: She signed it in January, and it was filed in April. I think I had better read that.

(The complaint referred to was marked and received in evidence as Plaintiff's Exhibit No. 7.)

Mr. Campbell: Also I would like to offer in evidence the decree for permanent maintenance as Plaintiff's Exhibit No. 8, which appears in that same file, and which was entered in 1950.

The Court: Was that by consent?

Mr. Campbell: That was by consent, following the taking of testimony.

The Court: Following the taking of testimony?

Mr. Campbell: Of a portion of the testimony, yes, sir.

The Court: Following the taking of testimony, some of which you have read in the record of this case?

Mr. Campbell: Yes, Your Honor.

The Court: Tell me what the judgment was that
58 emanated out of that; the substance of it will do.

Mr. Campbell: I would like to get it exactly.
This will be offered as Plaintiff's Exhibit 8. It is a judgment for permanent maintenance and counsel fees.

(The judgment referred to was marked and received in evidence as Plaintiff's Exhibit No. 8.)

* * * * * * * * * *

60 By Mr. Campbell:

Q. Mrs. Uline, the first time you heard Mr. Uline wanted a divorce was in 1938 when he wrote you that letter, wasn't it? A. I believe it was.

Q. How did you happen to keep a copy of your reply? A. How did I happen to keep it?

Q. Yes. A. Oh, I don't know. I kept a lot of copies, and then again I didn't.

Q. Have you any copy of any other letter you ever wrote to Mr. Uline? A. Oh, yes, I did have some.

Q. Do you have them here? A. No, I don't.

61 Q. You don't have any copies of any other ones you ever wrote Mr. Uline?

Mr. Reilly: I object to the cross examination.

The Court: Obviously it would have to be.

The question, Mrs. Uline, is, Do you have any copies of any other letters that you wrote to Mr. Uline?

The Witness: I think I have some home, but I didn't think of bringing them.

By Mr. Campbell:

Q. Mrs. Uline, after you got that letter in 1938 you knew Mr. Uline wanted a divorce, didn't you? A. Yes.

Q. And you have known it ever since, haven't you? A. Yes.

Q. In fact, I believe you testified you instructed your counsel to watch the Florida courts to see whether or not any divorce proceedings were filed in Florida? A. That is right. I think they employed an attorney down there. I think they did.

Q. After that time isn't it a fact all your negotiations with Mr. Uline were had through counsel? A. That is right.

Q. You didn't have any yourself? A. No.

The Court: After what?

62 Mr. Campbell: After 1938.

The Court: After 1938.

The Witness: I think that is right.

The Court: Let us be sure I understand that. Since 1938 you have not written, yourself, directly to Mr. Uline?

The Witness: Oh, yes, I have, if that is what you mean.

By Mr. Campbell:

Q. I didn't quite get that. A. Yes, I have. I wrote to him every Christmas.

Q. Where did you write to Mr. Uline, what address? A. In Washington.

Q. Whereabout in Washington? A. Wherever he was living.

Q. Where was he living? A. He lived at the Broadmoor, for one, and I think most of the letters went there.

Q. Didn't you actually send most of them to his office? A. No; I never sent any letters to his office, not that I know of.

Q. You didn't send whatever Christmas messages you sent to his office? A. No.

Q. You didn't keep copies of any of those, did you? A. No.

63 Q. Your daughter, Mrs. Pratt, was living in Washington during some period of time? A. Well, she has been married to Dr. Pratt for 12 years. She lived in Washington before that.

Q. She lived in Washington? A. For some time. I don't know just how long.

Q. When she married Dr. Pratt she moved away from Washington? A. Yes; she did. She moved to Detroit.

Q. That has been 12 years ago? A. Twelve years ago.

Q. Before she moved to Detroit, you used to come to visit her here in Washington? A. I did, yes.

Q. That was after your separation from Mr. Uline? A. That is right.

Q. And on none of those occasions did you go to see Mr. Uline, those visits? A. When he was around, I did. That is the only time.

Q. That is the first year, you mean? A. Yes; that is right.

Q. That is the only time you ever went to see Mr. Uline? A. I didn't visit him any other time.

64 Q. You didn't call him up? A. But I saw him a number of times then after that, after we were separated. He came—

Q. You spoke of his visits up there. A. Wait a minute. He came to my home twice when we were first separated.

Q. That is right. You spoke about that. I am referring to your visits to Washington. A. No; I don't remember any visit, only that one when he was ill.

Q. You came to see Mrs. Pratt a number of times? A. Oh, yes.

Q. When she was living in Washington? A. Yes.

Q. When you came to see Mrs. Pratt, you didn't see Mr. Uline? A. No. I didn't.

Q. You came to see her about how many times, would you say, during the period? A. Oh, I don't know.

Q. Half a dozen times? A. Oh, all that. When she lived there, I used to go back and forth quite often.

Q. You didn't call Mr. Uline on the telephone on those occasions? A. I didn't call him on the telephone, no.

65 Q. I have got to go back to the time when Mr. Uline left you the first time, which I think you said was some time between 1910 and 1920? A. Yes.

Q. You say he would go around with other women? A. Oh, yes, plenty of them.

Q. Then he came back after eight months, didn't he? A. About that time. I never knew where he was the eight months he was gone.

Q. From that time until 1930 you and Mr. Uline did not live together as husband and wife, did you? A. No.

Q. When he came back in 1910, or whenever it was, to 1930, you never lived together as husband and wife? A. Oh, yes, we did, when he came back from his eight months stay.

Q. Did you continue to live together as husband and wife? A. For a little while, yes.

Q. For the last ten years when you and he were living under the same roof, prior to the time he left you this last time you did not live together as husband and wife? A. No. About ten years, yes.

Q. Ever since 1938, I think you said you knew Mr.
66 Uline wanted a divorce, didn't you? A. Yes.

Q. Do you recall Mr. Uline's filing a suit for a divorce in Florida against you? A. I never knew that—Florida, yes. I thought you meant Mexico.

Mr. Campbell: If Your Honor please, in the opening statements I referred to a suit by Mr. Uline he had filed in Florida in 1950. Mr. Reilly stated there were two suits, and one had been filed in 1947. In checking the file with me it appears both suits were actually filed in 1950. One of them was filed in January, 1950, before the 90-day Florida residence and a new one filed March 25, 1950.

The Court: Each was a suit for divorce?

Mr. Campbell: Each was a suit for divorce. The first one was dismissed, voluntarily dismissed by Mr. Uline.

The Court: Withdrawn by him?

Mr. Campbell: Yes, sir, and the second one was filed March 23, 1950.

The Court: Each alleging, I take it, the same facts?

Mr. Campbell: I don't know what the first allegation was. It was a suit for desertion. I would like to offer in evidence and, again, for a limited purpose, the proceedings, and this will be Plaintiff's Exhibit No. 9, the proceedings in the Circut Court for the Fifteenth Judicial Circuit
of Florida, and the case is Migiel J. Uline v. Carolyn
67 Eierman Uline, consisting of a bill of complaint filed
March 23, 1950, and the answer by Carolyn Eierman Uline, filed April 21, 1950, and a counterclaim by her on the same date, a petition for temporary alimony and attorneys' fees and a stipulation for an order for dismissal without prejudice.

The purpose of offering the pleadings is solely this, to show again that Mrs. Carolyn Uline by her attempts was requestion permanent alimony from Mr. Uline, and nowhere in the pleadings does she make any legal tender, or any tender or request for reconciliation.

The Court: I suppose the most pertinent thing now would be her answer.

Mr. Campbell: I am content to offer simply her answer and counterclaim.

The Court: What does she say in her answer and counterclaim?

Mr. Campbell: The bill of complaint, if the Court please, is a bill of complaint for divorce on the grounds of desertion, constructive desertion by Mr. Uline against Carolyn Eierman Uline, and contains a large number of allegations of mental cruelty and treatment which resulted in constructive desertion.

Mr. Reilly: I object to the statement of the pleader. That isn't even what it says, if I read it correctly.

Mr. Campbell: He does not allege she physically
68 left him—exactly what I have said.

The Court: It is his conclusion that it amounts to desertion.

Mr. Campbell: It is desertion by virtue of her conduct.

The Court: What does she say?

Mr. Campbell: She gives an elaborate denial of the detailed allegations of the complaint which I do not care particularly to go into one way or the other.

The Court: This is really my question. In her answer does she say anything at all about their relationship over the period of years?

Mr. Campbell: She has no reference to any relationship since 1930.

The Court: She doesn't say anything about what happened while they were apart and so on?

Mr. Campbell: Let me go on down. It does make certain references to that.

The Court: Perhaps it would help me, Mr. Campbell, and shorten this if I would read it.

All right.

Mr. Campbell: May this be received in evidence, Your Honor, these pleadings?

The Court: Yes.

Mr. Reilly: The full complaint and answer, as I understand it.

69 The Court: Right.

Mr. Campbell: Yes; although I have offered them for a limited purpose.

The Court: I understand it.

(The pleadings referred to were marked and received in evidence as Plaintiff's Exhibit No. 9.)

By Mr. Campbell:

Q. Mrs. Uline, you have testified during the last ten years before Mr. Uline and you separated in 1930, ten years before that you discontinued living together as husband and wife?

Mr. Reilly: I object, of course, that being prior to the date mentioned in the complaint.

The Court: I overrule the objection. The answer may stand.

By Mr. Campbell:

Q. Did you sleep in separate rooms, Mrs. Uline, during that period? A. Yes.

Q. Did you prepare his meals during that period? A. Oh, yes, whenever he was at home, but I never knew when he was coming. He would go out, two or three days, sometimes four at a time. I never knew, but when I knew, I would have his meals. I did cook meals every night. Of course when he wasn't there I just sat down and ate mine alone.

Q. Is it correct to say there was a virtual separation between you in the same house during that period?

Mr. Reilly: I object. That calls for a conclusion.

The Court: No; I don't think it calls for a conclusion. I think it calls for an answer as to the fact.

By Mr. Campbell:

Q. My question is during the period isn't it a fact there was a virtual separation between you in the same house, during that last ten years? A. We weren't enemies, or anything like that.

The Court: I thought Mrs. Uline had already said just about exactly that, earlier. You know the ten-year period Mr. Campbell has in mind when he is asking you these questions?

Refer to it.

By Mr. Campbell:

Q. I am talking about the period before he finally went away in 1940.

Mr. Reilly: Can we indicate it is between 1920 and 1930?

The Court: Suppose we do that. It will certainly make it clear that way. Between, say, roughly 1920 and 1930, during that 10-year period, were you and your husband living in the same house, but for all practical purposes living separate and apart? That is the question.

71 The Witness: Yes; we were living in the same house. Yes.

The Court: Not as husband and wife?

The Witness: Not as husband and wife.

The Court: That is what he was asking you.

Mr. Campbell: If the Court please, that will complete my direct examination of this witness. I would like in the light of her testimony to ask leave to amend the complaint to indicate a separation as of 1920, rather than of 1930.

Mr. Reilly: I object, if the Court please.

The Court: On what ground, that it comes too late?

Mr. Reilly: I think it comes too late and, secondarily, I don't think we are anywhere near the time that can be done because the testimony isn't all in.

The Court: He simply wants to amend the complaint from the allegation of separation since March 1, 1930, to an allegation of separation sooner, around 1920.

Mr. Reilly: I have not been able to prepare on that, for the period prior to 1930. It is the first I heard of it, today. I don't think it comes now at the proper time.

72 The Court: There isn't anything to prepare.

Mr. Reilly: That I am not too sure about.

The Court: I will allow the amendment.

Mr. Reilly: With an objection?

May I proceed?

Cross-Examination

By Mr. Reilly:

Q. Mrs. Uline, you were asked by Mr. Campbell relative to a settlement with Mr. Uline on the basis of $200,000. Tell me, when you answered Mr. Campbell, was that with reference to a matter I had handled for you, or was that with reference to a matter someone else had handled for you, some other attorney? A. You mean about the $200,000?

Q. $200,000.

The Court: May I suggest another way of putting that question, so I will be sure Mrs. Uline understands it.

At the time you tried to get the $200,000 settlement, was Mr. Reilly your lawyer?

The Witness: Yes.

The Court: That is the question.

The Witness: I think he was. I think that is right.

By Mr. Reilly:

Q. Mrs. Uline, wasn't that proposal submitted by Mr. Uline's counsel, if you will recall, and by me turned
73 over to you and your Toledo counsel?
Do you recall that?

The Court: Do you understand what Mr. Reilly means by that?

Did your husband suggest the $200,000 settlement?

The Witness: No; I suggested that $200,000. That is what I asked for.

By Mr. Reilly:

Q. Let me ask you, Mrs. Uline, if this isn't what occurred.

Mr. Campbell: Your Honor, I object to that. This is Mr. Reilly's own client.

The Court: I know.

Mr. Campbell: And I am permitted to ask leading questions under the rule, but I don't think the same privilege exists for him.

The Court: I don't know how Mr. Reilly can avoid it. That is the trouble. I think we will all agree it is somewhat unusual.

Mr. Reilly: Judge, it is, or Mr. Campbell and I are going to take the stand on that.

Mr. Campbell: I am referring to earlier negotiations.

The Court: I want to be sure that the witness knows what period of time each of you are talking about. I have
heard of a $200,000 proposal. It isn't clear in my
74 mind at the moment, whether or not it was to her,
when that proposal was made. I assume from the answer of Mrs. Uline it was a proposal which she made. Now, I rather gather it is a proposal which was allegedly made by her husband. Are we talking about a proposal—

Mr. Campbell: Or two different ones. I think Mr. Reilly may have two different things in mind. I had in mind and tried to frame the question, and I thought Mrs. Uline answered the question with respect to the negotiations with Mr. Dunn.

The Court: Since I have to resolve this thing, I think you had better make me clear.

Mr. Campbell: Shall I ask this question again?

The Court: Go ahead.

Mr. Campbell: Do you recall my questions to you with regard to your requesting $200,000 in settlement of your property rights?

The Witness: Yes.

Mr. Campbell: And you recall I was asking you about the negotiations which Mr. Dunn had before the filing of the maintenance suit in the District of Columbia?

The Witness: Yes.

Mr. Campbell: Those are the negotiations which I was referring to.

The Witness: Oh, I see.

75 Mr. Campbell: Are those the negotiations which
you were referring to?

The Witness: No.

The Court: Who was Mr. Dunn?

The Witness: He was my first attorney.

The Court: Here in Washington?

The Witness: In Toledo.

Mr. Campbell: He is a member of the Toledo firm to which reference has been made.

The Witness: He was Judge Dunn at one time.

The Court: When was that?

The Witness: When I first started suit against Mr. Uline.

The Court: About when would that be? Would you remember?

Mr. Campbell: In 1947, when the suit was started.

The Court: Would that be right?

The Witness: I believe that is right.

Mr. Campbell: That is what I am referring to.

The Court: Mr. Reilly apparently is not. Are you talking about another?

Mr. Reilly: I am talking about a matter Mr. Campbell and I personally discussed.

Mr. Campbell: I am not referring to that in the least.

Mr. Reilly: That has been but last year.

The Court: All right.

76 By Mr. Reilly:

Q. Do I understand in approximately 1947 there was a discussion by your counsel with your husband relative to a settlement for $200,000? A. No; that was just recently.

The Court: Wait a minute. There I go again.

Mr. Reilly: That is what I am coming back to now, if I may, if Your Honor please.

The Court: Go ahead.

By Mr. Reilly:

Q. Did there ever, prior to 1952—

The Court: This year?

Mr. Reilly: This year.

By Mr. Reilly:

Q. Did there ever, prior to this year, arise a discussion to settle your marital difficulties for $200,000? A. That is right.

Q. When was that? A. That was about a year ago, or last May.

The Court: If I do it my own way, it may be clearer. That I don't know. I will try.

Within the past year you had some discussion through your lawyers, did you, about an attempt to get $200,000?

The Witness: That is right.

The Court: Property settlement?

77 The Witness: That is right.

The Court: Had the $200,000 property settlement ever been discussed by your lawyers before this last year or so?

The Witness: No, I don't think so.

The Court: On some other occasion?

The Witness: Not until recently.

The Court: In the year, let us say, around 1947?

The Witness: No.

The Court: Did you at that time try to settle your property differences with your husband for $200,000?

The Witness: Not at that time.

The Court: Just this past year or so, that is the first time?

The Witness: The first time of the $200,000; yes.

The Court: Prior to that had you attempted, either directly or through a lawyer, either here or in Toledo, had you attempted to get any settlement of any amount?

The Witness: I didn't try, but he would settle for $135,000. It was stock, but it was not preferred stock. We wouldn't accept that.

By Mr. Reilly:

Q. Who was "he"? A. My husband.

The Court: That is all right. We just want to know who it is you are talking about. When was that $135,000?
78 When was that suggestion made by your husband, about how long ago?

The Witness: I know it must have been five years ago, I think. That is providing I got a divorce, you see, he would settle for that.

By Mr. Reilly:

Q. Mrs. Uline, did you at any time ever agree with Mr. Uline to get a divorce? A. No, never.

Q. Did you at any time from 1920 down to date ever agree to a separation? A. No.

Q. With him? A. No.

Q. Did you ever consent to the fact that he left you as a husband? Did you ever consent to the fact he would go away? A. Did I ever consent that he go away?

Q. Yes. A. No, I didn't.

Q. Did you ever resign yourself to the fact that he had left as your husband?

Mr. Campbell: That question, I think, is objectionable. It is conduct, rather than what was in her mind that is material. I object.

79 The Court: I overrule the objection. You may answer.

By Mr. Reilly:

Q. Did you ever resign yourself to the fact that Mr. Uline was no longer to be your husband? A. No.

The Court: Why not, in view of the fact you had been separated for so many years, for ten years, even while you were living in the same house?

Tell me why you did not accept what would seem to have been a reality.

The Witness: You mean a divorce?

The Court: The separation.

The Witness: Separation.

The Court: Either one or both.

The Witness: Well, I still cared for him, you know. He was my husband, and he was the father of my children.

The Court: That is what I wanted to know.

There was a reference in the letter which you wrote to your husband which Mr. Campbell read to me here a while ago to religious scruples of some kind, as being perhaps part of the reason, I don't know, why you didn't want a divorce.

What did you have in mind when you said that?

The Witness: In the first place, I am a Catholic.

The Court: Your husband is also?

The Witness: Yes.

80 The Court: Is that what you meant then?

The Witness: That is right, yes.

The Court: Do you have the language she used?

Mr. Reilly: Yes, she used—

The Court: I am right, am I not?

There is some such phrase. It was a reply to a letter.

Mr. Campbell: I have got the letter here.

Mr. Reilly: 1938, I think. It was in the record before Judge McLaughlin.

Mr. Campbell: Page 36.

The Court: Here is the paragraph that I have in mind, your letter to your husband.

You said:

"Your letter was such a shock to me that I could not write. After thirty-six years of married life, one does not terminate it by divorce. For the sake of our children, our grandchildren, and our dignity, a divorce must not be. Above all, my religious principles would not permit it—and neither should yours."

What do you mean by that?

Just what you say, I guess.

The Witness: Just what I say, I guess.

The Court: Would it be accurate to say that the reason over all this period of years you never agreed to a divorce, even though you were in fact separated, was because
81 you were a Catholic?

The Witness: Not that alone. I didn't want to have a divorce.

The Court: Wholly apart from your religious feeling?

The Witness: Not that, and then I didn't want a divorce. I had two children, you know, to consider.

The Court: My question is, was your religion the only reason you didn't want to have a divorce?

The Witness: No, I still cared for him, I have said.

By Mr. Reilly:

Q. Mrs. Uline, did you on February 6, 1950, testify before Judge McLaughlin in this Court, the other court building?

Mr. Campbell: We will stipulate any of that you wish to put in and save trouble.

The Witness: In the maintenance trial?

Mr. Reilly: Yes.

The Witness: I did.

Mr. Reilly: May I now read the question and answer before Judge McLaughlin?

The Court: This was on the—

Mr. Reilly: Maintenance action, February 6, 1950. I am reading from page 22, by me:

"Mrs. Uline, did you ever at any time advise Mr. Uline you had no objection to the institution by
82 him of a suit for divorce against you?

"Answer: I did not.

"Question: Are you now ready and willing and able to resume marital relations with him?

"Answer: I am.

"Question: Have you at any time ever threatened to institute a suit for divorce against him?

"Answer: No; I never threatend to institute a suit for divorce against him."

Now, a similar, I suppose, stipulation relative to the testimony that Mrs. Uline gave in Detroit, Michigan, at the time of her deposition.

Mr. Campbell: I am reading from page 78, may it please the Court. It was an examination of Mrs. Uline by Mr. Uline's counsel.

We have stipulated this testimony may be offered subject to relevancy. I do want to reserve an objection as to relevancy, both on the last statement. Again on the question of whether or not she is ready and willing as of such and such a date to resume marital relationships was not relevant on the issues in this case in 1950 unless that desire had been communicated to him under the doctrine of the Parks case.

The Court: I gathered from Mr. Reilly's opening statement he is going to at least attempt to prove exactly that, that over this entire period she evidenced desire.

83 Mr. Reilly: I am reading now on page 78, by Mr. Burke, Earl E. Burke, of Detroit, who was counsel for Mr. Uline:

"Question: Why didn't you go to Washington, when your husband went there?

"Answer: He didn't want me to go.

"Question: How come you moved to Toledo?

"Answer: Well, my daughters were living in Toledo, and that was the best place for me. I didn't want to be alone.

"Question: Do you mean to say that your husband has never asked you to come to live at Washington with him?

"Answer: No. Had he, I would have gone."

On page 89 of the same transcript, which was January 24, 1950, question by Mr. Uline's counsel:

"Question: Don't you think there is something to the fact that he thinks, that he thought it was better that you not live together, when you couldn't be happy?

"Answer: We could have been happy if he would just have gone halfway, we could have been happy.

"Question: Well, maybe you could have been happy, if you had gone 75 per cent of the way, too.

"Answer: Well, maybe so.

"Question: Living a life of solitude as you were
84 with him, prior to the separation, you must have
found a certain amount of contentment being alone
after the separation, didn't you?

"Answer: No, I didn't. I missed him very much. I didn't want to be separated from him, I didn't like that. That isn't what I wanted. If he would say today, 'Come and live with me,' I would say 'Okay'; I would go.

"Question: You think after having as many years as you have had to think it over, you might be able to be different with him?"

Then there was objection, and that was not answered.

"Question: If you were living with him now, would you treat him different than you did when you were living with him?

"Answer: I certainly would be very nice to him if I was living with him, and I think he would to me, now. I think as you get older, you realize what you missed, that happy companionship.

"Question: As you get older sometimes you realize the mistakes you made when you were younger, too, don't you?

"Answer: Yes; I don't doubt that.

"Question: And you know now the mistakes you made with him, don't you?

"Answer: Well, I made mistakes, I think we all
85 make mistakes. There is no one that doesn't make
a mistake. We all make mistakes at times, some
time or another; which we are sorry for afterwards.

"Question: What mistakes did you make when you were living with him, that you are sorry you made?

"Answer: Well, I don't know now. That I don't know.

"Question: But you know there were some?

"Answer: Well, I didn't say that. There were some mistakes, yes, everybody makes mistakes."

I also wish to invite Your Honor's attention to the testimony of Mr. Uline on page 42 of his deposition, and I outlined this to Your Honor in my opening statement.

* * * * * * * * * *

(There was a short recess.)

87 Mr. Reilly: If Your Honor please, during the adjournment Mr. Campbell has had an opportunity to look over all these letters, and I think he admits they are in the handwriting of Mr. Uline, addressed to Mrs. Uline.

Mr. Campbell: I have no objection to them.

Mr. Reilly: January 9, 1931, is postmarked on the envelope. The letter contained therein is undated, and addressed, "Dear Carrie," that being Mrs. Uline.

"Many thanks for the cigar lighter. If you have any light shirts or a straw hat that I could use, please send them. The only shirts I may have there that are any good would be the monogrammed shirts, those that were made to order. The only hat that may be any good would be the Panama I had last summer.

"Sincerely
"M. J."

The Court: I wonder if it would save time if I read those? Do you want them to be read into the record? That could be done by Miss Powell actually copying them. Are they in chronological order?

Mr. Reilly: One or two are the ones Mr. Campbell was using.

88 The Court: I see I am getting into trouble right off the bat here.

Mr. Reilly: May I help you, sir?

The Court: This has the letter in it.

Mr. Campbell: May I ask Miss Rothged, who is Mr.

Uline's executive assistant, to sit with me, to give me information on the matters I am not familiar with?

The Court: This is 1931. The next thing I have is 1946.

Mr. Reilly: There is one more of November 26, 1946. I don't know whether you have got that.

The Court: No, I haven't got that.

Mr. Reilly: Now, Your Honor, there is one dated January 6, 1950, that Mr. Campbell has seen. It is the latest, I think, January 6, 1950, from a lawyer in Florida, on the subject of Mr. Uline seeking to get her to consent to a divorce.

The Court: I think they are in chronological order. They may be received.

Mr. Reilly: Your Honor will probably recall Mr. Campbell offered only part of an affidavit made by Ross W. Shumaker, of the Ohio Bar.

Mr. Campbell: I offered the entire affidavit. I only read to Your Honor part of it.

Mr. Reilly: Didn't you limit it for some purpose?

The Court: He offered the whole thing, but for a
89 limited purpose.

Mr. Campbell: I didn't want to concede the amount of attorneys' fees they were requesting.

Mr. Reilly: I offer it for the total purpose of showing the services rendered by the Shumaker firm to Mrs. Uline and the value of the services rendered by them to her from September 17, 1946, down to October 2, 1952. The bill is in the amount of $7,500, with $672.13 worth of expenditures, totaling $8,172.13. They credit $3,239 paid on account. The ~~total~~ balance due by Mrs. Uline to them is $4,933.13, and I have another affidavit made by Mr. Shumaker of that same firm wherein he states that for services rendered in this divorce action for her as itemized in this statement, he directly sent her, his bill is $2,500 for services, and $40.85 for disbursements. I do not believe Mr. Campbell agrees that is what it should be, but that is what their bill to her is.

The Court: All right.

Mr. Reilly: I have also submitted to him a copy of this second affidavit, have I not?

Mr. Campbell: Correct.

Mr. Reilly: I offer that, as well as the statement and proof I have just outlined.

Mr. Campbell: The first includes services rendered prior
to the divorce proceedings. In other words, that is
90 not before the Court, and they are prior to the time
of the divorce proceedings now before the Court.
Without going at this time into the scope of services for which counsel are entitled to be compensated, I would like to reserve objection to such portion of the affidavit for the purposes for which Mr. Reilly offers it relating to services other than performed in this suit.

The Court: You do not object on the ground it is an affidavit, rather than testimony?

Mr. Campbell: No, sir.

The Court: All right.

(Defendant's Exhibits 1 through 21 received in evidence)

By Mr. Reilly:

Q. Mrs. Uline, I think you stated on your examination by Mr. Campbell that you stopped communicating with your husband, Migiel J. Uline, in 1949; am I correct? A. Yes.

Q. Will you relate to the Court why you stopped communicating with him in 1949? A. Because he was living with another woman.

Q. Who was that woman? A. Mrs. Houseman.

Q. Is that his present wife? A. Supposed to be; yes, sir.

Q. Where was he living with her? A. He built a
91 new home for $75,000, and she moved in in January,
some time, 1950. Then later on she moved her
clothes. Then she, herself, moved in, and has lived there ever since.

Mr. Campbell: This may or may not be true, but I am sure the witness has no personal knowledge of it, Your Honor.

The Court: I am sure of that, too.

Mr. Campbell: I would object to it in its present form.

By Mr. Reilly:

Q. Where was the house located? A. In Florida, Fort Lauderdale.

The Court: Do you move to strike this testimony?

Mr. Campbell: Yes, I do.

The Court: I have got to sustain the objection, except to this extent, that information that she had gathered, true or not, was a reason for her stopping her correspondence. I think that is admissible.

Mr. Reilly: That is the sole purpose.

Mr. Campbell: I have no objection to her statement she had heard that and therefore stopped writing.

Mr. Reilly: That is the sole purpose for which it is offered.

By Mr. Reilly:

Q. When you came to Washington, D. C., to visit your daughter, Mrs. Pratt, while she was living here, you stated
to Mr. Campbell you did not communicate with Mr.
92 Uline. A. No.

Q. Will you relate to the Court— A. Not as far as I know. I may have called him, but I don't remember. I don't remember. I am not sure of that.

I did want to see him so badly when I was there, but I couldn't get in touch with him.

Q. That is what I want to bring out.

Why couldn't you get in touch with him? A. I didn't want to call his office. I didn't want to call him and go see him there. He didn't come to her place. I know one time I sat in her car—

Q. I am afraid you are talking a little too indistinctly for the lady taking this down. A. I went with my one daughter. She went up to see him at the office, and I stayed in the car. I thought possibly he might come down, give me a chance to talk to him, but he didn't.

Q. When was that? A. When Mrs. Pratt lived in Washington. I can't state the year.

Q. How long has she lived in Detroit? A. Twelve years now.

Q. Would it be in 1940 she was living in Washington?
This is 1952. A. No, she wasn't living in Washing-
93 ton in 1940, because she has been married twelve
years. I don't think she was living there then, not
at that time.

Q. Where was she living when she married? A. In Detroit.

Mr. Campbell: That clears it up.

The Court: It doesn't clear it up for me.

Mr. Campbell: I think I can clear it up.

The Court: I am the one it is supposed to be cleared up for.

Mr. Campbell: May we be informal and clear it up? Mrs. Rothged probably can clear it up.

(There was a discussion off the record.)

Mr. Reilly: Counsel stipulates from 1934 to 1940, Mrs. Pratt, the daughter of Mr. and Mrs. Uline, was living in the District of Columbia, that in 1940 she went to Detroit, and married Dr. Pratt, and has been there since.

By Mr. Reilly:

Q. During the years 1934 to 1940, how many times did you come to Washington to visit with your daughter, Mrs. Pratt? A. That I couldn't say, but it was a number of times.

The Court: As often as once a year?

The Witness: Oftener than that, every two or three months.

The Court: Over that entire period of time?

The Witness: Yes.

94 By Mr. Reilly:

Q. During that time, from 1934 to 1940, did you see or communicate with Mr. Uline? A. 1934 to 1940?

Q. Between those two dates. A. Not that I know of.

Q. Do you know whether your daughter communicated with him? A. Mrs. Pratt?

Q. Yes. A. Yes, they did. They were very good friends.

Q. Did they visit back and forth? A. Well, I don't think he came there so much, but she went to see him at his office numbers of times, but I can't say how often.

Q. Did Mrs. Pratt say anything to you as to what Mr. Uline said to her about you?

That is being asked for a limited purpose.

The Court: What is the purpose?

Mr. Campbell: I would like to know what the purpose is.

The Court: Your question is whether Mrs. Pratt told Mrs. Uline anything that her father said to her?

Mr. Reilly: That is correct.

Mr. Campbell: I think this is objectionable. I think she can state what she may have heard as reason for certain conduct, but only that. 95

Mr. Reilly: Very well, sir.

By Mr. Reilly:

Q. Do you know whether or not between 1934 and 1940 Mr. Uline, your husband, was keeping company with a lady? Just answer yes or no. A. Yes.

Q. Do you know who that lady was; do you, yourself, know? A. Yes, I do. I have never met her.

Q. Just tell me whether you know or not. A. Yes, I know.

Q. Who was it? A. Well, as far as I know—

Q. No. If you don't know, say you don't know. A. I was told—I never saw her with him.

Q. Not what you were told. Do you know who the lady was? A. Betty Perkins.

The Court: What is the name?

Mr. Reilly: Betty Perkins.

By Mr. Reilly:

Q. Do you know where Miss Perkins is now? A. That I do not know.

96 The Court: This is not being objected to, but is it proof of anything?

Mr. Reilly: The reason was, why he hasn't been contacted. Mr. Campbell developed she did not contact him during the times she came to the District of Columbia. I want to indicate why.

The Court: Wouldn't it be a good idea to ask her why?

Mr. Reilly: I tried a few minutes ago, and it was objected to.

The Court: No.

Mr. Reilly: I will put the plain question to her.

By Mr. Reilly:

Q. Will you tell the Court, please, why you did not communicate with your husband when you came to Washington to visit with your daughter, Mrs. Pratt?

The Court: From 1934 to 1940, you said you came every two or three months to visit with your daughter, Mrs. Pratt, but during that six year period you did not attempt to see your husband. The question you are being asked is whether you tried.

The Witness: I did attempt to see him, but I never went down to talk to him. I didn't want to call him at his place of business. I didn't want to go to see him there.

Mr. Campbell: She said she did not attempt to see him, a moment ago. I don't believe she means to say she attempted to see him.

97 The Court: Let us find out.

Mr. Campbell: Repeat the question of just a moment ago.

The Court: Let me try it again, please.

From 1934 to 1940, you say you came to Washington periodically every two or three months, to see your daughter, Mrs. Pratt. That is right, isn't it?

The Witness: Yes.

The Court: You didn't see your husband during that six year period, did you?

The Witness: No.

Mr. Campbell: The witness answered no?

The Court: She said no.

What we want to know from you is why you didn't see him at any time during that six year period.

The Witness: Well, I didn't want to call him at his place of business, and the opportunity never presented itself to me to see him at any other.

The Court: Why did you not want to call his place of business?

The Witness: I don't know. I just didn't want to.

The Court: Was he living in Washington then?

The Witness: Yes, he was.

The Court: Why didn't you call him at his home?

The Witness: I just didn't.

The Court: Was there any reason why you just didn't?

98 The Witness: I didn't know what he might say or do, and I was just a little afraid to call him there.

By Mr. Reilly:

Q. Had he ever said or done anything that would cause you to be afraid to call him there? A. No, but I knew Mr. Uline. I knew just what he would do if anybody aggravated him.

Q. What would he do? A. He would do a lot of things.

Q. You got to be more specific. I am sorry.

The Court: In your opinion, what would he have done?

The Witness: If I did something like that, he would probably stop my allowance.

By Mr. Reilly:

Q. Had he ever threatened to stop your allowance? A. Yes, he had.

Q. Has he ever stopped it? A. No, he hasn't stopped it, but he doesn't pay up on time.

* * * * * * * * * *

99 Q. You testified on direct examination as to Christmas cards or presents that you sent Mr. Uline.

Will you relate to the Court during what period of time you did that? A. It was Christmas gifts.

Q. When did that begin? A. That went on for a number of years. I don't know just when it began, but it stopped in 1949. That was the last I gave him.

Q. Can you tell us whether it began at Christmas 1930? A. No, I don't believe so. I think it was later than that.

Q. How much later? A. Oh, maybe five years, something like that. I am not positive about that.

Q. Let us go, then, to the beginning of 1935. Will you relate whether it happened every year or not? A. Every year? Yes, of course. I used to send birthday gifts, too, but I didn't send any more, just a Christmas letter and gifts.

Q. At the time you sent the Christmas cards, do you recall anything you said on any of them? A. I didn't say too much. They were short letters or short notes.
I just asked him if I could come back to live in
100 Washington with him, make a home for him.

Q. Would there be any variation in that statement from year to year? A. Maybe a little bit; not too much.

Q. Will you relate whether that occurred every year between 1935 and 1949? A. I am sure it did.

The Court: You mean every year from 1935 to 1949 you communicated with him, saying you wanted to come to Washington and live with him?

The Witness: I sent him a gift, yes, and I asked him in one way or another.

The Court: Every year?

The Witness: Yes.

The Court: With reference to birthdays, what if anything did you do?

The Witness: I would send him a gift now and then. I didn't send that every year, no.

The Court: What is his birthday—what month?

The Witness: November 29.

By Mr. Reilly:

Q. On how many occasions would Mr. Uline go to Cleveland or Toledo, or wherever you were living between 1936
and 1950? A. He would go to Detroit and Toledo.
101 I never saw him in Toledo—I must take that back.
I think I said he came twice to see me in my apartment.

Q. When was that, please? A. Right after we separated.

Q. That would be in 1932? A. Something like that.

Q. 1931? A. Yes.

Q. Did you see him in 1935, if you know, at your home? A. I can't answer that. I don't know.

Q. Would there be any family gatherings he would come to? Just say yes. A. Yes.

Q. Where did that occur? A. At Mrs. Pratt's home.

Q. Where? A. In Toledo? I said he didn't come to Toledo, but I didn't see him. Yes, I did. I must take that back. I am getting confused.

Q. Are you getting tired? A. No, I am not, but I am awfully confused. He used to come there to Mrs. Pratt's in Toledo. Then he came to Detroit, I think at the wedding, at Patty's wedding, and one other time. I am sure I have that right.

Q. Did Mrs. Pratt live in Toledo before she came
102 to Washington to live in 1934? A. Yes.

Q. So that it would be sometime, then, between 1930 and 1934 that he came to Mrs. Pratt's residence in Toledo?

The Court: Suppose we let that alone until tomorrow morning and take it up from there.

* * * * * * * * * *

103 (Whereupon, at 3:45 o'clock p.m., there was an adjournment until 10 o'clock a.m., December 9, 1952.)

* * * * * * * * * *

PROCEEDINGS

105

Mr. Reilly: I have shown to Mr. Campbell this morning a series of letters from Mr. Uline to Mrs. Uline, which Mr. Uline delivered to me just before we came in the door this morning.

I may say to Your Honor that I personally have found a little difficulty sometimes with Mrs. Uline so far as memory is concerned, and that is the reason, perhaps, for not presenting these things yetserday. I just didn't have them.

I think they will be 22, 23, 24, 25, 26, 27 and 28. They consist of letters, birthday cards and checks, dated as indicated on each envelope, and perhaps for the benefit of the record I had better indicate what they are.

Number 22 is dated January 25, 1933.

No. 23 is dated January 2, 1934.

No. 24 is April 25, 1933. That is a little out of chronological order.

The next is February 10, 1934.

April 28, 1936.

April 30, 1936.

And the final one is a birthday card or check from Mr. Uline to Mrs. Uline of April 30, 1940.

Perhaps Your Honor would like to read those.

Mr. Campbell: The notations on the outside of the envelopes, I take it, are not Mr. Uline's, the pencil
106 notations?

Mr. Reilly. That is true.

The Court: That certainly looks to be the case.

(Defendant's Exhibits 22 through 28 received)

Thereupon, **Carolyn Uline** having been previously sworn, resumed the stand and testified as follows:

Cross-Examination (Resumed)

By Mr. Reilly:

Q. Mrs. Uline, you testified yesterday afternoon during the period from approximately 1920 to 1930 you and Mr. Uline did not live together as man and wife? A. I did say that yesterday.

Q. Do you wish now to tell the Court you were mistaken about that? A. That is right.

Q. Will you relate whether between 1920 and 1930 you and Mr. Uline lived together as husband and wife?

Mr. Campbell: If Your Honor please, I do want to note objection at this stage. The witness' answers were very clear-cut. The question was repeated a number of times, both by me and by the Court. Obviously, I do not think she ought to be permitted on leading questions from her counsel to—

The Court: I overrule the objection. I will hear
107 what she has to say today.

By Mr. Reilly:

Q. Mrs. Uline, between the time Court adjourned yesterday afternoon and the time you came to Court this morning, did you see or talk to me? A. No.

Q. When was it you first brought to my attention that you were mistaken about that which you said yesterday afternoon? A. Out in the corridor.

Q. When? A. This morning.

Q. Was there any period between 1920 and 1930 that you and Mr. Uline did not live together as man and wife? A. Between 1920 and 1930?

Q. Yes. A. No; we lived together as man and wife at that time.

The Court: That entire period of ten years?

The Witness: Pardon?

The Court: Is that the entire ten-year period?

The Witness: Yes.

The Court: You remember yesterday I asked you—when the lawyers asked you about that I did myself, and I asked
you if you were living in the same house, and you
108 said you were, and I said for all practical purposes
were you actually living apart, even though in the
same house, and you said, "Yes."

The Witness: I know I did, but I was mistaken. When I got home I went over everything. I wasn't myself yesterday. I wasn't myself yesterday. I was all tired out.

The Court: During that period, then, of ten years, from 1920 to 1930, did you and your husband separate in so far as marital life was concerned, for any period of time, even though you did live in the same house?

The Witness: Did we separate? No.

Mr. Reilly: I am afraid she didn't understand.

The Witness: Maybe I don't.

The Court: I am not sure she does. You go ahead.

By Mr. Reilly:

Q. Will you describe to the Court your living quarters during that period from 1920 to 1930? Did you have an apartment or house? A. An apartment.

Q. How large was that apartment? A. Two rooms and a kitchenette.

Q. Bathroom? A. And a kitchenette.

Q. What were the two rooms? I am trying not to lead.
A. One was a bedroom and one was a living room.
109 Bath, I assume? A. Oh, yes.

Q. How many beds were in the bedroom? A. One.

Q. Double bed? A. Yes.

Q. Now, during the period from 1930 down to date, did you receive any greetings of any kind from your husband? By that I mean Christmas or birthday. A. Yes; I got Christmas gifts. Not of late. Not of late, but I did.

Q. When did that stop? A. Oh, I should judge about three years ago, something like that.

Q. What were those gifts? A. In money. It usually was $50.00.

Q. Was there any salutation from him to you contained in those cards? A. No; it was just a check.

Q. Were any notes contained? A. No.

Q. From him to you? A. No.

110 Q. By notes I mean letters. A. There might have been said once in a while, but not every Christmas, "Merry Christmas."

Q. How about birthdays? A. Well, he did send me birthday gifts, not every birthday, but occasionally I would get a birthday gift from him.

Q. What was your custom yourself relative to Christmas and birthdays, to Mr. Uline? A. I sent him birthday gifts. I used to send him every year. Toward the last I did not send him every year birthday gifts, but always sent him Christmas gifts, and a little note or a letter, something saying could I come to Washington or could we get together, something like that, just a note or letter. It was always a short note or short letter.

Q. Did you ever get an acknowledgment from Mr. Uline of your Christmas or birthday cards. A. No.

Q. Did you ever acknowledge his? A. I did.

Q. Mrs. Uline, from 1930 down to date, will you relate to the Court your disposition relative to living with Mr. Uline as husband and wife.

Mr. Campbell: Objection.

The Court: I sustain the objection to that on the
111 ground that she has already testified.

Mr. Reilly: I didn't know it was down to date. I want my question comprehensive enough from the time of separation down to date has she always been ready, willing and anxious to resume marital relations with Mr. Uline.

The Court: I thought that was what she testified to yesterday, and, as a matter of fact, Mr. Campbell objected on the ground it was conduct rather than state of mind. I am sure she did state that. I overruled his objection at the time.

Mr. Reilly: Very well, sir.

Would Your Honor like me at this time to go into the financial needs of Mrs. Uline.

The Court: I don't really care very much. I should think that would come better later, rather than now.

Mr. Campbell: I would much prefer to have the examination on the subject in chief.

The Court: Other witnesses on the subject in chief first, I think is preferable.

Mr. Reilly: I am through.

Mr. Campbell: I want to examine Mrs. Uline again.

The Court: Is that all you want to ask her?

Mr. Reilly: Yes.

Mr. Campbell: May I have some redirect examination?

112 Redirect Examination

By Mr. Campbell:

Q. After the hearing yesterday, did you see your grandson, Bob Foster? A. No.

Q. Didn't talk to him at all? A. Out in the—wait a minute.

Q. Didn't you talk to him after this hearing? A. For just a minute. He came up and kissed me.

Q. Haven't you talked to him about this case any?

The Court: Yesterday afternoon or last night?

By Mr. Campbell:

Q. Haven't you talked to Bob a little bit about this case? A. I don't remember. I don't think I did. I talked to him this morning about different things, about his mother and everything.

Q. Let me talk to you a minute about your testimony yesterday and about the last ten years of your marriage, between 1920 and 1930. Let me refresh your recollection as to your testimony. You had stated that Mr. Uline had left you sometime between 1910 and 1920 for a period of eight months and you didn't know where he was. A. Yes; that is right.

113 Q. You stated yesterday he came back, you resumed normal marital relations of husband and wife? A. Yes.

Q. For a little while, I think you said. A. Until we separated.

Q. And then you said for about the last ten years of your life in the same house that you did not live as husband and wife, but occupied separate rooms. A. I know I said that, but that wasn't right. When I got home I went over everything. I found out it was all wrong.

Q. What did you find at home that changed your mind this morning? A. I got to thinking of things and summed everything up, and I found out I was wrong.

Q. Didn't you occupy separate bedrooms? Didn't he sleep in the living room? A. No; those ten years, with the exception of the time he was gone eight months, we did occupy the same room, because we only had one.

Q. Didn't you have a house part of that time, and didn't Bob live with you a little part of that time? A. No.

Q. You didn't have a house?

The Court: What period are you talking about?

114 The Witness: Bob lived with us when he was a baby.

By Mr. Campbell:

Q. You had a house? A. Yes, but that was years ago. Bob did live with us, but he was about a year old.

Q. You testified yesterday, Mrs. Uline, that you prepared meals for Mr. Uline during this period when he was home, but he was very seldom home. A. Yes.

Q. And he didn't tell you when he was coming back? A. That is right.

Q. He didn't take you out any, did he? A. Not then, no.

Q. During that ten-year period? A. Well, I don't know whether—I can't say. I can't be certain. That is so far back.

Q. I know it is. A. That is quite a ways back for me to remember.

Q. But for quite a while before he left Cleveland and came to Washington he didn't take you out at all, did he? A. I just can't say that now. I don't know.

115 Q. And the atmosphere in your house—apartment—was pretty tense, wasn't it? A. Not so much. It was just when he would go out, wouldn't tell me when he was coming back, when he was going. I know he was out with another woman. We probably had just a little bit to say, and I just forgot about it, because I knew it wouldn't do any good to go on with it.

Q. Didn't have chairs, for instance, you put paper on or strings on, to keep him from sitting on them? A. No. No; that is not true.

Q. Mrs. Uline, would you say Mr. Uline was a strong character, that is, one who spoke his mind at all times? A. Yes. That is something I never did. That would be a childish thing to do.

Q. Was he that kind of a man who would always speak his mind? A. He would speak his mind and he would want his way.

Q. You said you were afraid after you separated he would cut off your allowance? A. He threatened to cut off my allowance. Any little thing that didn't suit him he would say he would cut off my allowance.

Q. But he didn't? A. No; he didn't.

Q. Never did? A. He threatened me many times, but never did.

116 Q. Never did? A. He never cut off the allowance, but it would never come on time, as I told you yesterday.

Q. Have you finished your answer? A. I was going to say before I came he sent me a thousand dollar check and that was for, I think, ten weeks and he should have paid—he was supposed to pay the money every week, on a Saturday. That is what the maintenance was for and that is the way it was set up, but I never got it that way, and he would always hold back two or three weeks, even if he did pay me.

Q. I believe you said you were in the habit of sending him a Christmas present and a Christmas card? A. Not a card. A letter or a little note.

Q. A Christmas letter? A. It was never a very long letter. It was a short note or letter.

Q. You say he didn't reply to those? A. No; he didn't.

Q. A good many of these notes which have been offered in evidence here, Mrs. Uline, have reference to little presents you had sent him and thanking you for them? A. I don't remember. I don't think they were Christmas. They might have been birthday gifts.

117 Q. Might have been birthday? A. I think he did send me a thank-you note for a birthday gift, but I don't think he ever sent any for—I know he didn't.

Q. I gather from the letters you have brought here you tried to keep all his notes? A. I kept every letter and every envelope he ever sent me.

Q. And you brought all of them you could find down here and gave them to your counsel? A. I didn't just bring all of them, but I think I brought most of them.

Q. You brought most of them? A. Yes.

Q. Do you want the Court to understand that in all of your Christmas letters to him and birthday letters to him that you would say to him that you wanted to return to him in Washington? A. Not in my birthday letters, I didn't, no, but usually at Christmas times.

Q. Why did you Christmas and not birthdays? A. Well, I thought Christmas meant more to me than the birthday did. The Christmas was something I always observed and thought a lot of.

118 Q. You were pretty careful to do it at Christmas, but not birthdays? I am just trying— A. No—I don't know. Maybe I did, but I don't remember that I did, but I know I did at Christmas time.

Q. What explanation do you have, if any, for the fact that in none of Mr. Uline's replies to the notes and presents that you sent him does he make any reference to your wanting to come back to Washington?

Mr. Reilly: I don't believe that is the fact.

Mr. Campbell: Except for one.

The Court: Say that again, Mr. Campbell.

Mr. Campbell: On one occasion in 1933.

By Mr. Campbell:

Q. There has been offered and received in evidence as Defendant's Exhibit 3 a note from Mr. Uline to you, Mrs. Uline, dated February 20, 1933:

"Dear Carrie:

"I do not understand your statement in your letter when you say I do not write. I do write, but it now seems that more letters will make things more unpleasant for us both so why continue. Why did I leave you? You know why I left you. Because I could not possibly stand it any longer. I told you time and time again you were making things so that I would be obliged to leave you. Why should you come to Washington? There is absolutely nothing to be gained by coming here. It only complicates matters more. Please do not come. Fail to see why

119 you should complain about bad times and taxes and think your statements of love come rather late. Note what you said about theaters. Things must be bad in Toledo, but then they are bad everywhere."

You will note in this letter he replies, I take it, to a letter which you had sent him offering to come to Washington. A. Yes; I guess so.

Q. With the exception of this single letter I do not believe—and I suggest to Mr. Reilly—that there is a single letter written by Mr. Uline, or one written by Mr. Uline which has been offered in evidence in which he makes any reference to any request or suggestion on your part that you rejoin him. Isn't that a fact? How do you explain the fact that in none of these communications which were in reply to presents which you had set him, and presumably letters which you had sent him offering to come back to Washington did he ever refer to that fact?

Mr. Reilly: I object.

The Court: On what ground?

Mr. Reilly: It calls for the witness' explanation of what somebody else may have thought or said.

The Court: It does have that characteristic, unquestionably, and necessarily so. Of course there is a possibility it could be accounted for by Mrs. Uline.

120 Mr. Campbell: I am seeking to impeach the witness, also.

The Court: I know you are. It is possible Mrs. Uline could account for it by saying, "Well, I only wrote him once to that effect, and that is the reason he only mentioned it once." I don't expect that is what she is going to say, but the question is perfectly legitimate. Suppose that was the answer. She thus would be able to account for it.

Mr. Reilly: Then we are assuming something may not even be so. We can't speculate.

The Court: But we are dealing with the question of admissibility. The question is admissible if it is susceptible of drawing such a response.

Mr. Reilly: I take it Your Honor is overruling me?

The Court: Yes, but I am giving a reason for my ruling.

Mr. Campbell: Will you read the question?

(The pending question was read by the reporter.)

The Witness: I am sorry. I didn't hear you.

Mr. Campbell: Let me repeat the question.

By Mr. Campbell:

Q. I have shown you one letter in which he replied to your request you be permitted to come to Washington. A. Yes.

Q. And it says very definitely your protestations of love
come late, and he doesn't want you, in effect, in
121 Washington. That was written in 1933. You stated
that you sent him regularly presents with a little
note, and your counsel has offered and we have in evidence here a large number of replies from Mr. Uline to those presents and notes which you sent him. In not one of those does he refer to any suggestion that you come to Washington. How do you account for his failure to mention that if you say you wrote him on all of those occasions?

Mr. Reilly: Same objection.

The Witness: I know that he paid no attention to that. He just let that slip by.

By Mr. Campbell:

Q. Didn't you just say Mr. Uline was a very forthright man, said just what he thought and didn't hesitate to reply? A. Anything like that, he didn't say much about things like that. He really didn't.

Q. Didn't you also say you were afraid to take up certain matters with him because he would cut off your allowance? A. Yes; I did say that.

Q. Were you afraid to take up with him the question of your coming back to Washington? A. No; I wasn't afraid of that. I did want to go back. I asked him many a
122 time. Maybe I don't make myself clear enough. I don't know. I am trying to do the best I can.

The Court: Let me ask you this, in that connection, Mrs. Uline.

You say you wrote to him a number of times saying you wanted to come back to Washington, come to Washington and resume marital life.

The Witness: Yes.

The Court: Is that right?

The Witness: Yes.

The Court: You made those proposals by mail. Did he ever respond or reply to your letter saying, "No, don't come," as he did in that letter Mr. Campbell just showed us? Is that the only time he ever responded?

The Witness: When he answered that letter, maybe I had asked him to come back to him. I know when he was here, I went to Washington. He said, "What are you doing here?" I said, "I came because you were ill." And he says, "Go back to Toledo."

The Court: We were talking about by letter. You say by letter you on a number of occasions said you wanted to come back and live with him in Washington.

The Witness: Yes, but he never answered that.

The Court: That is what we want to know. Out of all these letters there is only one of them that refers to that?

The Witness: He never answered that. He didn't
123 say anything about it, he just dropped that.

By Mr. Campbell:

Q. Mrs. Uline, you said you stopped sending letters and presents to him after he took up with Mrs. — A. Mrs. Houseman.

Q. Houseman? A. That is right.

Q. Was that because you couldn't continue to send—want to be in touch with him when he was going around with another woman? A. Yes; I couldn't write to him when I knew he had someone else. I couldn't do it.

Q. You have testified Mr. Uline was interested in other women a good part of the time, haven't you? A. Yes.

Q. Now, do you recall testifying yesterday about a person named Betty Perkins? A. That is right.

Q. And did I understand you to say that for a period of some six years— A. Sixteen years.

Q. Sixteen years he went around with Betty Perkins?
A. Yes, that is information I got. I never saw her
124 with him.

Q. Is that one of the reasons when you were in Washington visiting Mrs. Pratt— A. Yes.

Q. —that you didn't get in touch with him? A. Well, it may have been part of the reason.

Q. This was one of these other women you had reference to? A. Yes.

Q. You didn't want to be in touch with him then, did you? A. That is right.

Q. And all during that sixteen-year period when he was going around with Betty Perkins you really made no effort to come back to him? A. Oh, yes. I asked him to go back to him. Yes; I did.

Q. That is what I am trying to get at. When did you do that? A. What?

Q. When did you do that? That is what I am trying to get at. A. At different times. I can't say when, but at
different times. I don't know how many times. I
125 can't say that either.

The Court: During that six-year period, 1934 on to 1940, when you would come here every two or three months to visit your daughter, where did your husband live, during that six-year period? Did he have a house or apartment?

The Witness: No. He always lived at a hotel.

The Court: That is an answer to my question. He lived at a hotel that whole period?

The Witness: I just don't recall the name of the hotel.

The Court: The Commodore would perhaps be one of them?

The Witness: I don't know whether he lived there at that time or not, but I believe he did.

The Court: You knew where he lived.

The Witness: Yes. Yes.

The Court: Did you ever go to se him at his hotel or try to see him at his hotel during that period of time?

The Witness: No. I don't know whether—

The Court: You told us yesterday you didn't attempt to get in touch with him at all while you were here.

The Witness: Yes; I did, in different ways. As I say, I went over to his plant one day and I sat in the car. My daughter was up to see him and I sat there, thinking probably he would come down with her and I would have a chance to talk with him, but he didn't come down. I did try, in different ways, I wanted to go to the
126 Arena at the time it opened up and he said to me not
to come. I found out later he was taking somebody else, because he said I could come that night. I thought probably I would see him then.

By Mr. Campbell:

Q. Mrs. Uline, you spoke of having come to Washington when Mr. Uline was ill, soon after he left Cleveland. A. Yes, it was about—it was, I think, about four or six weeks later that he became very ill.

Q. Do you recall another time he became quite ill, sometime in the early 1940's, some time about ten years ago? A. Well, he was sick off and on, and the doctor told me he had gallstones, but when they operated on him in Washington they found kidney stones.

Q. You didn't come to see him any more, then, when he was sick? A. I came once. No. I came once. He commanded me to go back to Toledo.

Q. You accepted his command, so to speak? A. That is right.

Q. And acquiesced in it?

Mr. Reilly: I object.

The Court: Well, the trouble with that is it has 127 two connotations. One of them is legal and the other one isn't.

The Witness: As I say, he was ill off and on with gallstones.

By Mr. Campbell:

Q. On yesterday you referred to some negotiations which your Cleveland lawyers—I don't mean these last negotiations, recently—but negotiations which your Cleveland—I don't mean Cleveland, Toledo lawyers had had with Mr. Uline? A. That was Mr. Dunn. That is right.

Q. Mr. Dunn. Those negotiations were some years ago, four or five years ago, the ones I am referring to? A. No; that wasn't four or five years ago. That was just before the maintenance suit.

Q. That was just before the maintenance suit? A. He went up to see him about that. Just shortly before the maintenance suit.

Q. Before the maintenance suit was filed, you mean? A. That is right.

Q. That identifies it from the point of view of time. I think you mentioned something about $135,000 at that time. A. For what?

Q. That you were negotiating about, $135,000 that Mr. Uline had offered you, $135,000 as a property settle- 128 ment. Do you recall something about that? A. I don't know about $135,000. I don't remember $135,000.

Q. I know you mentioned— A. $100,000.

Q. $100,000, you say. A. I think that is what it was, $100,000 he offered me.

Q. What did you ask for then? A. I made a mistake on that yesterday. It was $100,000 I was thinking about.

Q. Not $135,000? A. No. I made a mistake on that.

Q. You are sure the figure was $100,000. That was the period before the maintenance suit, when Mr. Dunn was negotiating, just before the maintenance suit? You think to the best of your memory—let me refresh your recollection again from your testimony of yesterday, because we are both trying to get at the facts here. A. I know.

Q. You said that quite recently there had been some conversations about a $200,000 settlement. You remember that, yesterday, but that was within comparatively
129 recent months. A. I never really asked for a settlement. What I was—

Q. You spoke of Mr. Dunn's negotiations before the maintenance suit was filed? A. Yes; that is right.

Q. What was he negotiating with Mr. Uline for? A. That I don't know.

Q. You said something about a $100,000 proposal. A Mr. Uline, as far as I know—I think I am right—offered $100,000.

Q. Did you make any reply to that? A. No; I didn't. I wouldn't settle. I didn't want a settlement. I didn't want a divorce. What I mean, if a divorce means a settlement, I didn't want that. I don't know how it works out. I may be talking out of turn.

Q. I wasn't referring so much to a divorce, but did you want a property settlement so that you were no longer concerned with how much he would send you and so that you would have it at all times? A. I don't know.

Mr. Reilly: When you just said you don't know, do you mean you do not know what Mr. Campbell was talking about?

The Witness: Mr. who?

Mr. Reilly: Campbell.

The Witness: I didn't quite understand.

130 Mr. Reilly: I thought possibly she didn't understand.

The Witness: I don't know.

Mr. Campbell: Do you want me to make the question more clear?

Mr. Reilly: If you want to.

By Mr. Campbell:

Q. Were you interested in getting—shall I call it security, in the form of a fixed—

The Court: Lump sum.

By Mr. Campbell:

Q. Lump sum, rather than having these payments come to you every week? A. I wanted security. I still want security, but I don't know what I did—I really can't tell you what I did, now. I really don't remember.

The Court: Is that all?

Mr. Campbell: That is all.

Recross Examination

By Mr. Reilly:

Q. Mrs. Uline, you were asked about approximately, I think, sixteen years, during which time Mr. Uline was going around with a woman by the name of Betty Perkins. Do you remember that question being asked you? A. Yes.

131 Q. Was Mrs. Perkins, or Betty Perkins, living in the same house with your husband, so far as you know? A. That I don't know.

Q. Was Mrs. Houseman in 1949 living in the same house wth him, so far as you know? A. In 1949 they were in different places, but as far as I know they moved in the new house in January; I think it was January. It was around January or February.

Q. Of what year? A. 1950.

Q. And was it because Mr. Uline was living in a house with Mrs. Houseman at that time that you did not make further negotiations with him relative to returning to him?

A. Yes. Of course I didn't see him living in that place. I can't prove that. It is just something that was told me.

Q. Is it as a result of information brought to you of that fact that you stopped— A. That is right.

Q. —making overtures? A. That is right.

Q. To return to him? A. That is right.

132 Q. During the time your daughter Mrs. Pratt was here—I overlooked this on my first direct—and you visited with her, how long did you stay with her on those occasions? A. Well, that I don't exactly know, but it wasn't a week. It was more than a week. It was probably two or three weeks.

Q. How often a year would you come to visit your daughter? A. Oh, say about three times a year, something like that. I can't tell the exact time. Something like that.

Q. During that time did Mr. Uline ever come to see you? A. Well, he came to her home.

Q. Did he see you when he came to her home? A. Yes, he did.

Q. Do you remember, Mrs. Uline, the period that Mrs. Pratt lived in the District of Columbia?

Mr. Reilly: The reason I am posing this again is I received information last night to indicate from—

The Court: Wait a minute, now.

Mr. Reilly: I beg your pardon.

The Court: You can ask your question but don't tell her the answer.

By Mr. Reilly:

133 Q. Do you know when your daughter, Mrs. Pratt, lived in the District of Columbia? A. Well, yesterday I didn't know, but when I went home I found out I was wrong. I said seven years. It was from 1938 to 1941 she lived in Washington.

Q. Was it during that period you saw Mr. Uline in her home? A. Yes; she had him over for dinner.

Q. Were you at the same dinner table? A. Yes.

Mr. Campbell: Wait a minute. What is this?

Mr. Reilly: She had him over for dinner. Were you at the same dinner table? Yes.

By Mr. Reilly:

Q. Was there any conversation between you and Mr. Uline at that time? A. Nothing more than just talking about the family and different things like that. I didn't have a chance to talk to him.

Q. Was any affection shown by him toward you at that time? A. Well, he talked to me.

Q. You told Mr. Campbell just a few minutes ago—I think it was Judge Schweinhaut—that you tried in different ways to get to see Mr. Uline. Outside of going
out to the Uline Arena that you spoke about, what
134 other ways did you attempt to get in touch with him?
A. At my granddaughter's wedding.

Q. Any other ways? A. Well, they used to come to my home for dinners on Thanksgiving, and my daughter Mrs. Capron's on Christmas and Mrs. Pratt's on New Year's Day.

Q. Mrs. Capron is your other daughter? A. I tried to talk to him, but I couldn't say what I wanted to say. There was always someone around.

Q. At the time the family gathering would be at your house, would Mr. Uline come there? A. Yes; he did.

The Court: Where was that?

Mr. Reilly: That is what I am coming to right now.

The Court: In Toledo?

Mr. Campbell: She testified yesterday but two or three years after the separation.

Mr. Reilly: I want to get the date.

The Witness: I couldn't tell you that.

Mr. Reilly: Could you give us the approximate date?

The Court: Starting with the time he left and came to Washington, you continued to have the family cinners you have just described?

The Witness: Yes.

135 The Court: On Christmas Day and New Year's Day would he come out from Washington to attend those dinners?

The Witness: Yes; he did.

The Court: Was that for a period of time shortly after he moved here?

The Witness: I believe that that happened after we were separated not too long.

The Court: Yes. Over what period of time, roughly, would you have those family dinners that he would attend, over a period of how many years, if it was more than one year?

The Witness: Oh, it was more than one year. I just don't remember how long. Toward the last he didn't come any more for the dinners.

The Court: I want to go back to the period of time which you say now was between 1938 and 1941, instead of 1934—

The Witness: No. No; that was later, in 1938 was when Mrs. Pratt lived in Washington.

The Court: I say I want to come back to that period now.

The Witness: When he came to my house, that was later than that.

The Court: When he came to your home it was before Mrs. Pratt moved to Washington, wasn't it?

The Witness: I believe that is right.

The Court: When he came to your home for those
136 dinners, Mrs. Pratt had not yet moved to Washing-
ton, had she?

The Witness: No.

The Court: Yes?

The Witness: No.

The Court: You say now she came to Washington in 1938 and stayed here until 1941.

The Witness: But he had dinners there, too.

The Court: Didn't you say yesterday you did not make any effort to see him during your visits to Mrs. Pratt?

The Witness: I did make efforts, but I did not have the opportunity to talk to him. You see, there were too many people around. I couldn't.

The Court: I thought you said yesterday you didn't want to, I think as you put it, bother him at the arena, or his office. And you weren't asked, and I didn't think about it until last night about where he lived and whether you made any efforts to see him where he lived. That is why I asked you this morning about the hotel. You say you didn't attempt to see him there?

The Witness: Where he lived, there was always someone else there. Someone that I couldn't come in contact with, that I didn't want to come in contact with if I went there.

The Court: All right.

137 By Mr. Reilly:

Q. Who was the someone you did not wish to come in contact with? You have to answer, Mrs. Uline.

The Court: Well, was it some one particular person, or more?

The Witness: I think there were a number of people that were there. I would hate to say that because I didn't see it. It is just what I was told. I didn't see it myself and I don't know too much about it.

By Mr. Reilly:

Q. Were you told there were other women there? Would you put it that way? A. Yes.

Mr. Reilly: All right. That is all.

By Mr. Campbell:

Q. You testified yesterday that Mrs. Pratt was here for about six years? A. Seven years, I said yesterday.

Q. Six or seven. A. I was wrong.

Q. When you went home last night you found out you were wrong? A. Pardon me?

138 Q. When you went home last night you found out you were wrong? A. Yes. I went over the different things. And I never thought about the dinners we used to have at Christmas.

Q. You mean you didn't talk to anybody about this, Mrs. Uline? A. Last night?

The Court: Yes; last night.

The Witness: No.

The Court: How did you find out you were wrong?

The Witness: I knew I was wrong when I went over it, when I thought back.

The Court: Did you go over it with anybody?

The Witness: No; when I went over it with myself, I sat there thinking. I said to myself, "You are wrong." I did not even mention about Thanksgiving dinners, Christmas and New Year's.

By Mr. Campbell:

Q. Mrs. Uline, you did talk to Bob Foster, who sat in this room and heard you testify? A. When?

Q. Before you got on the stand this morning. A. I talked to him out in the corridor. The nurse was there.

Q. Didn't you talk to him about this case? Seriously didn't you talk to him about the testimony you gave,
139 Mrs. Uline? A. Well, yes, I believe I did say I made an awful mistake.

Q. Wasn't he the one that told you about what you should have testified to? A. No. No; he didn't say what I should testify to. No; not that I know of. I didn't hear that. If he said it, I didn't hear it. I didn't.

Q. And no one told you to change your testimony about living apart from Mr. Uline? A. No. No.

The Court: Now, let us go back to that for a moment, because this leaves me somewhat puzzled.

Was there any period of time before your husband left to come to Washington when you and he were living in the same house, but not as husband and wife?

The Witness: We did then live as husband and wife, though.

The Court: I beg your pardon.

The Witness: We did live as husband and wife before he came.

The Court: Was there any period of time before he came
to Washington when you didn't live as husband and
140 wife, even though you were occupying the same
premises.

The Witness: We did. The only time was the eight months that he left and was gone.

The Court: That is the only time? There never was any period of time when you lived in the same house but not as husband and wife?

The Witness: As far as I know we always lived as husband and wife with the exception of that eight months.

The Court: Leaving aside that eight months for a moment, did you before your husband came to Washington always live in an apartment, either in Cleveland or Toledo—you didn't move to Toledo until he came to Washington, did you? He came to Washington from Cleveland, didn't he?

The Witness: Yes; he did.

The Court: All right. In Cleveland did you and Mr. Uline always occupy an apartment?

The Witness: There was a house.

The Court: That was a house?

The Witness: Yes.

The Court: In Cleveland?

The Witness: Yes.

The Court: Are you sure that at no time you and Mr. Uline lived in that house together but not as man and wife?

The Witness: We lived as man and wife, but many
141 a time he would sleep by himself, many a time I
would, but not always, because we had two bedrooms.

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Mr. Campbell: I want a little documentary evidence here. In order that the Court may have the full facts relative to the conduct of the parties and because I believe it may have some bearing on the subject I offer in evidence the certified record of the Mexican divorce proceedings between the plaintiff and defendant in the case, which took place in the year 1950.

The Court: That may be received. We will have to wait and give it an exhibit number.

(The certified copy of the Mexican divorce proceedings was received in evidence.)

Mr. Campbell: I also offer in evidence—I don't know whether Mr. Reilly has seen this.

Mr. Reilly: I can't read it. Mr. Campbell says it is a marriage certificate in Spanish.

Mr. Campbell: I understand it is a marriage certificate between the plaintiff and Elva Frances Houseman.

Mr. Reilly: That is the same day as the divorce decree?

Mr. Campbell: That is correct. * * *

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142 With the exception of Mr. Uline and the possibility of calling him, we will now rest.

The Court: All right.

Mr. Reilly: Call Mrs. Houseman.

Mr. Campbell: Mrs. Houseman Uline.

Mr. Reilly: Mrs. Houseman Uline. Excuse me.

Thereupon **Elva Frances Houseman Uline** was called as a witness by counsel for the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Reilly: If the Court please, may I present this witness under Rule 43 (b) as a hostile witness?

The Court: Yes.

By Mr. Reilly:

143 Q. Mrs. Houseman, what is your name—Mrs. Houseman Uline, what is your name? A. Elva Frances Houseman Uline.

Q. When and where were you born? A. I was born in Mount Carmel, Maryland, May 6, 1894.

Q. How long have you lived in the District of Columbia? A. I have lived in the District of Columbia since 1921.

Q. How long have you known the plaintiff, Migiel Uline? A. Ten years.

Q. When and where did you meet him? A. I met Mr. Uline at his arena the year of 1942, on December 5.

Q. What was your occupation at that time? A. I was in business.

Q. What was the nature of the business? A. I owned a beauty parlor.

Q. Were you an operator there? A. I owned and operated.

The Court: Just a moment, madam.

The Witness: I am sorry.

By Mr. Reilly:

Q. Was it approximately in 1942 you met Mr. Uline? A. It was on December 5 1942.

144 Q. And from that time on did you people become better acquainted? A. No; for five years we were just friends, receiving many telephone calls and I had dinner out with him on a few occasions, but very few.

Q. Did you not know at that time he was married? A. I did not.

Q. Did there come a time when you learned he was married? A. I learned that he was married when he was sick in Doctors Hospital.

Q. When was that? A. That was, I think, in 1946. I can't be exact, but I think in 1946.

Q. Did there come a time thereafter you went to Florida with him? A. With him, no. I visited in Florida at his cottage, yes.

Q. At his home or cottage, or whatever we may call it? A. Yes; that is correct.

Q. Was your furniture transferred from Washington to his home or cottage in Florida? A. After he bought a home.

Q. Yes. A. Yes.

145 Q. Was your clothing transferred from Washington to his home in Florida? A. When I went down to Florida.

Q. Yes. A. Yes.

Q. When was that? A. That was in February, 1950.

Q. Did there come a time when you and Migiel Uline went through a marriage ceremony in Mexico? A. Yes.

Q. How long after his divorce decree was granted before you married him? A. Now, I was not present when he got his decree.

Q. Did you go with him to Juarez, Mexico? A. I did.

Q. Where did you go from there? A. Went to Fort Lauderdale, Florida.

Q. Had you been visiting with him at his home before you went to— A. Yes.

Q. —Mexico? A. Yes.

Q. How long had you been there before you went to Mexico? A. I had been there from February until July.

146 I was accompanied to Florida by Mrs. Rothgeb and her mother. When they left my sister came down as chaperon.

The Court: Who is Mrs. Rothbeg?

Mrs. Stine: Stine, now.

By Mr. Reilly:

Q. Did you discuss with Mr. Uline the obtainment by him of a Mexican divorce? A. No; that was Mr. Uline's personal business. I have never interfered with Mr. Uline's personal business and I do not to this day.

Mr. Campbell: You just answer Mr. Reilly's direct questions.

The Witness: Thank you.

By Mr. Reilly:

Q. Did you know there was pending in Florida at the time of the Mexican decree a divorce action by Mr. Uline, instituted by Mr. Uline?

Mr. Campbell: If Your Honor please, I have waited to see what these preliminary questions might seek to develop. I take it Mrs. Elva Houseman Uline is not on trial here, either as plaintiff or defendant or in any other capacity and what her attitude may or may not have been has no relevancy to the issue in this case, and I object to further questions.

The Court: I would think not.

Mr. Reilly: Except for this. One of the defenses
147 here is Mr. Uline is not seeking this divorce solely
for the purpose of getting a divorce, but he is seeking it for the purpose of validating a marriage to the present—

The Court: What difference would that make?

Mr. Reilly: Because that is a defense to any divorce proceedings.

Mr. Campbell: I have seen nothing in the defense to that effect and, in any event, it has nothing to do with this under the Buford case, Your Honor.

The Court: I don't think so, either. It seems to me wholly apart from the question of clean hands, which I will hear you on at an appropriate time. If there was an actual valid separation within the meaning of the law, the conduct otherwise of either party, it seems to me, is wholly immaterial.

Suppose you had the case of a man and woman who had been separated by agreement, but still married. It wouldn't admissible on a trial of that issue, it seems to me, to prove misconduct, for instance, during the period of the separation, by either one of them, because it wouldn't have any relevancy as to whether there was in fact a voluntary separation for a statutory period of five years.

* * * * * * * * * *

149 Mr. Reilly: It would probably shorten it if I proffered what I want to prove by this witness, and if I am wrong, Your Honor can tell me I can't go
150 any further and the witness may be excused.

I want to prove these parties were together in Florida for some time prior to the Mexican decree. I want to prove they lived in the same house, under the same roof, and went around together socially.

I want to prove the Florida divorce proceedings was going on the rocks, that is a colloquialism, I mean they were having difficulties about it. They found that couldn't be done. They went to Mexico. Mr. Uline, while in Mexico, got a divorce, within 15 or 20 minutes he married the then Elva Houseman, now Mrs. Uline. So the purpose behind that is to show these proceedings that he instituted were not for the purpose of getting a divorce, but solely for the purpose of being free to enter into another marriage.

The Court: Which he couldn't do without getting a divorce.

Mr. Reilly: That is right.

The Court: I sustain the objection to that line of inquiry.

Mr. Reilly: Then the witness may be excused, as far as I am concerned.

Mr. Campbell: No questions. May the witness go back?

Mr. Reilly: Yes.

The Court: There is one thing that may have a relevancy here. When did you first go with Mr. Uline to Florida?

151 The Witness: Visit Mr. Uline in Florida?

The Court: Yes.

The Witness: 1947.

The Court: 1947?

The Witness: In 1947.

The Court: And how long did you stay there—you lived in his home down there at that time?

The Witness: My sister and I.

The Court: How long did you stay there that time?

The Witness: Four weeks.

The Court: Then subsequent visits down there with him or to his home, were there any since 1947?

The Witness: Yes, 1948.

The Court: And for how long?

The Witness: One month.

The Court: What about succeeding years?

The Witness: In 1949 Miss Rothgeb, her mother and I went down there at the same time.

The Court: It was in 1949 you went to Mexico?

The Witness: No, 1950.

The Court: Then you went back in 1950?

The Witness: That is right.

The Court: Under the same conditions?

The Witness: That is right.

The Court: And then it was that you went to Mexico?

152 The Witness: That is correct.

The Court: Did you ever live, prior to going to Mexico to get the divorce, did you ever live in the same house with Mr. Uline anywhere else?

The Witness: No.

The Court: Except the Florida visits?

The Witness: That is correct.

The Court: I am going to let my own interrogation that has just been had stand as perhaps on Mrs. Uline's contention that the reason she stopped writing him or whatever—getting in touch with him in 1945.

Mr. Reilly: 1949.

The Court: 1949, I meant to say. I think it is admissible on that question for whatever, if anything, it is worth.

That is all I want to ask, madam.

(The witness left the stand.)

Mr. Reilly: Mr. Marshal, may we have Mr. Foster?

Thereupon, **Robert U. Foster** was called as a witness by counsel for the defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Reilly:

Q. Mr. Foster, what is your full name? A. Robert U. Foster.

153 Q. Where do you live? A. 3530 Quesada Street, Northwest, Washington, D. C.

Q. Where were you born? A. Cleveland, Ohio.

Q. What is your relationship to Carolyn Eierman Uline and Migiel J. Uline? A. A grandson.

Q. Who is your mother? A. Hazel Capron.

The Court: How do you spell that name?

The Witness: C-a-p-r-o-n.

By Mr. Reilly:

Q. What is she to Mr. and Mrs. Uline? A. Daughter.

Q. Did you work for Mr. Uline for a while? A. Yes, sir.

Q. Will you relate to the Court when that was? A. I started to work for Mr. Uline in approximately June of 1938 until the early part of 1942, and left and came back in February of 1947 and worked there until May of this year.

Q. When you first came to Mr. Uline in 1938, where did you live? A. I lived with my aunt, Mrs. Pratt.

154 Q. Where was that? A. At, I believe this is the correct address, 3135 Ellicott Street, Northwest.

Q. Is Mrs. Pratt also a daughter of Mr. Uline? A. Yes.

Mr. Campbell: What was her name then?

Mr. Reilly: Hill.

By Mr. Reilly:

Q. Do you recall when Mrs. Pratt moved to that Ellicott Street address? A. Yes, sir; she moved here in June, 1938.

Q. Where did she come from? A. Toledo, Ohio.

Q. Did you come with her? A. No; I didn't. I came a month after she came.

Q. Do you know of your own personal knowledge up to June of 1938 she lived in Toledo, Ohio? A. Yes, sir.

Q. How far from her place did you live? A. About two blocks.

Mr. Campbell: I am sorry. Would you mind repeating that?

The Court: Does he know of his own knowledge what?

Mr. Reilly: Where Mrs. Pratt lived in June, 1938.

The Witness: Yes, sir.

The Court: What was your answer?

155 The Witness: That I do know.

The Court: Where did she live prior to June, 1938?

The Witness: Toledo, Ohio.

The Court: Now, the question is did you live there, too, and, if so, how far?

The Witness: I lived within two blocks of her in Toledo.

By Mr. Reilly:

Q. Did you have occasion to visit her? A. Oh, yes, very often.

Q. Do you recall, Mr. Foster, when your grandmother and grandfather separated, if you know of your own personal knowledge. A. No; I don't.

Q. By the way, how old are you? A. Thirty-one.

Q. Do you recall any family gatherings of your mother, your aunt, and any other members of the family? A. Yes, sir.

Q. When did those occur, those gatherings occur? A. Around Thanksgiving and Christmas holidays.

Q. Between 1930 and 1949 can you relate to the Court, please, whether Mr. Uline, your grandfather, was present at any of those family gatherings? A. Yes, sir; he was.

156 Q. Where was he present?

Mr. Campbell: Let us find out when it was.

Mr. Reilly: All right.

By Mr. Reilly:

Q. Where and when was he present? A. It was more or less understood in our family every Thanksgiving we would spend with my grandmother and grandfather before they separated, even until after they separated. Every Christmas was spent at our house, and every New Year's Eve was spent with my aunt, who is Mrs. Pratt now. She was Mrs. Hill at the time. Those gatherings I can testify to, I believe—I don't remember exactly.

Mr. Campbell: If the witness just answered the question, I believe it would be better. The witness has gone outside the question now.

The Court: He is going to elaborate on it. You may do that.

The Witness: Started around, I would say, around 1931 or 1932 and continued until the Christmas of 1936. That was the last time he came to our house for Christmas.

By Mr. Reilly:

Q. Did you see Mr. Uline with your grandmother on those occasions? A. Oh, yes.

157 Q. Now, did there come a time thereafter when you ever saw Mr. Uline with your grandmother? A. Yes, sir.

Q. Your grandfather with your grandmother, I should say. Will you relate to the Court when that occurred? A. I lived with my aunt, Mrs. Pratt, when she first came to Washington. My grandmother used to come occasionally to visit her in Washington. She would stay some time when she was here. I only remember a couple of occasions, but I do recall Mr. Uline came to visit Mrs. Pratt when my grandmother was in the house.

Q. Give us the approximate date of that, please. A. It would have to be between June, 1938, when I came here and—within a period of two years, because that is the only time I lived there.

Q. Did you see or hear your grandmother or grandfather talking together? A. Just occasionally on those particular instances.

Q. Do you recall an occasion when your cousin was married? A. Yes, sir.

Q. And by your cousin I mean Patricia Hill Uline, is that correct—Patricia Uline Hill. When was that? A. That was about seven years ago.

Q. Where? A. In Detroit, Michigan.

158 Q. Did you see your grandfather on that occasion? A. Yes, sir.

Q. Was your grandmother present? A. Yes, sir.

Q. Did you hear any conversation between them? A. Yes, sir.

Q. Will you relate to the Court what that was, please? A. We were rehearsing for the wedding. It was held in my aunt's home.

Q. You say seven years ago? A. Yes, sir.

Q. Can we make that 1945? A. I believe that is when it was.

Q. All right. Relate to the Court what occurred. A. We were rehearsing for my cousin's wedding. My grandfather was to give my cousin away. I was one of the attendants at the wedding. This was before the wedding actually took place. They were trying to get things straightened out. My grandfather came through and started talking to someone, I don't know who it was. My grandmother was standing with me. As a matter of fact, she had her arm in mine. When he finished his conversation, she went over to him and said, "Mike, I would like to talk to you." He said, "What do you want to talk about?" She said, "About you and me." He said,
159 "This is neither the time or place. See me later."

Q. Do you know anything about any threats made by Mr. Uline to your grandmother? A. No.

* * * * * * * * * *

164 Mr. Reilly: If the Court please, I would like to offer a photostatic copy of a Declaration of Domicile 165 and Citizenship signed by Mr. Uline, for the purpose of impeachment, that he entered into with the State and County Tax Assessor, Broward County, Florida, signed by him, sworn to by him on the 27th of January, 1950.

Mr. Campbell: It is my understanding, if Your Honor please, the document is offered not for the purpose of proving domicile in Florida but for the purpose of impeaching Mr. Uline's credibility.

Mr. Reilly: That is true.

The Deputy Clerk: Defendant's Exhibit No. 28.

(The document referred to was marked and received in evidence as Defendant's Exhibit No. 28.)

Mr. Reilly: If the Court please, this is a declaration of domicile and citizenship signed by Mr. Uline, sworn to by him on the 27th of January, 1950, gives his residence as 2700 Dell Mar Place, Fort Lauderdale, Florida, and it states as follows—would you like to read it?

The Court: Yes.

Mr. Reilly: If the Court please, I should like to offer in evidence on behalf of the defendant the answer of the plaintiff here, Migiel J. Uline, to her suit for maintenance and injunction and particularly Paragraph 4 thereof which states as follows—

The Court: Are you going to object to this?

Mr. Campbell: No.

166 The Court: Tell me again what it is you are reading from, and in what suit?

Mr. Reilly: It is civil action 1491-47 of this Court where Carolyn Uline sued Migiel Uline for maintenance and an injunction.

Mr. Campbell: We have already offered the complaint and final order in that case.

The Court: I remember now.

Mr. Reilly: I am offering the answer of Mr. Uline, and I wish to invite Your Honor's attention to Paragraph 4 thereof wherein he recites:

"Defendant denies all of Paragraph 6 and by way of defense says that he does not contemplate any sale of his property and other assets and has not and does not intend to institute proceedings for divorce from plaintiff in any foreign jurisdiction."

That is sworn to in this Court on the 4th day of June, 1947.

I should like to invite your attention to the interrogatories submitted by defendant to plaintiff in this instant cause of action.

The Court: All right. I have got the original in the file. Do you want to read all of them, or some, and would you like to use this?

167 Mr. Reilly: I don't think that I need to read them all to Your Honor. I offer them in evidence, but particularly I want to invite Your Honor's attention to the answer of Mr. Uline wherein he claims—

The Court: Give me the question number and the answer number.

Have you got your copy?

Mr. Campbell: I don't think I will need it.

The Court: Maybe you don't need it.

Mr. Reilly: 37, in particular, is the question.

The Court: Had you obtained legal advice as to your place or State of residence?

Mr. Reilly: Yes, Your Honor. He claims privilege.

The Court: I claim attorney-client privilege as to this answer.

Mr. Campbell: I am wondering if counsel is objecting to privilege.

Mr. Reilly: No objection, but if he is going to claim attorney-client privilege, I want the Court to know about it.

Mr. Campbell: For what purpose?

The Court: The interrogatories have been answered, and none of them have been objected to. It is already in evidence. I take judicial notice of them.

Mr. Campbell: I think that is correct.

The Court: Either of you can refer to any part you wish. Is there anything else other than 37?

168 Mr. Reilly: Here he claimed two or three times attorney-client privilege.

* * * * * * * * * *

173 Mr. Campbell: I have two brief matters to introduce, Your Honor.

The Court: All right.

Mr. Campbell: The first is an extract from the deposition of Carolyn Uline, taken in Detroit, Michigan, January 24, 1950, in what we have commonly termed as the maintenance suit, being Civil Action 1491-47 in this Court.

The extracts which I wish to introduce are found on pages 69 and 70 of the deposition. They are not very long.

"So that even prior to the separation, you argued over money matters?

"Answer: Well, it wasn't very much, once in a great while.

"Question: You argued over him not being home as much as you wanted him home, did you?

"Answer: You couldn't blame me for that, because I did like to have him home.

"Question: I just asked you if you did.

"Answer: Yes. He wasn't home, he was never home. He was out mostly every night.

"Question: This continued quite a long time, 174 between you and Mr. Uline, before the separation took place, didn't it, this type of argument?

"Answer: There weren't too many arguments between he and I, because we never talked to each other, very little.

"Question: You mean that you wouldn't talk to him?

"Answer: I would talk to him, but he would just pay no attention to me, so I didn't say too much and he didn't say too much.

"Question: Let's see, you were married in 1895, and you were separated in 1930. When did this condition of your not talking very much with each other commence, if you can remember?

"Answer: Well, I can't just say. I don't know just how long that was, but we talked to each other, but not too much. It would always lead up to an argument, so—

"Question: In other words, when you would try to talk with each other, it would end up in an argument?

"Answer: Sometimes it would, yes.

"Question: Well, it was more likely to end up in an argument than not to, wasn't it?

"Answer: Well, no, I can't say that it was all the time, no. We just, one or the other would keep
175 still.

"Question: Well, that didn't make for happiness between you, did it?

"Answer: No, it didn't, no.

"Question: As a matter of fact, you didn't have very much happiness in your married life?

"Answer: Not too much, no."

Mr. Reilly: The last relates to happiness and married life. I object to it.

The Court: I overrule the objection.

Mr. Campbell: If Your Honor please, Mr. Reilly and I have stipulated, and with this I rest as far as Mr. Uline is concerned, that if Mr. Uline, the plaintiff in this case, were called to the stand he would testify as follows:

1. He did not keep Mrs. Uline's letters.
2. He did not receive any letter or card from Mrs. Carolyn Uline after 1933 in which she asked or offered to return to him.
3. Mrs. Carolyn Uline did not personally offer to Mr. Uline to return to him after the exchange of letters in 1938 until her testimony in the maintenance suit.

The Court: The letter of 1938 has been read into evidence?

Mr. Campbell: The letter of 1938 has been read into evidence.

176 Mr. Reilly: That he would so testify, not that that is a fact.

The Court: I understand that.

Mr. Campbell: Based on that, if the Court please, I believe, having in mind my general responsibility as a lawyer to my client, and his physical condition, that I owe it to the Court and to my client not to call him unless the Court finds it necessary for the Court's own reasons.

Mr. Reilly: I have no further testimony.

The Court: Do you desire that Mr. Uline's deposition be taken?

Mr. Reilly: I do not.

The Court: Very well, and neither do I, so I am prepared to hear you gentlemen.

Mr. Campbell: Now, shall I proceed on the merits?

If Your Honor please, I submit on the evidence in this case the plaintiff is unquestionably entitled to a divorce on the ground of five years voluntary separation from the defendant.

* * * * * * * * * *

202 Mr. Reilly (on argument): Mr. Uline had one purpose in mind throughout this matter, and that is to marry someone else, and then we come to a very, very serious question of law in this case, and that is that any suit for divorce must be brought in good faith for the sole purpose of redressing a matrimonial wrong.

203 Those cases, the authorities in support of that, are set forth generally in the cases of Kirschbaum v. Kirschbaum, 111 Atlantic 697—

The Court: Let me interrupt at the outset of that phase of your argument to ask you this. That line of cases about which you are now about to comment, is it applicable in your opinion to a divorce case that is not based upon wrongful act or desertion, not based upon wrongful act of adultery, or so on, but based rather upon a separation to which either both have agreed or at least have acquiesced in. You don't have a matrimonial wrong there. It is simply formalizing what has been in fact an agreement or acquiescence. I wonder if the cases you are about to cite are the present case, which does involve—

Mr. Reilly: We have changed that law in the District of Columbia to some extent, but he who comes into equity must come with clean hands.

* * * * * * * * * *

204 I do think that he who comes into equity must do so with clean hands, and that applies to a voluntary separation or otherwise.

We maintain very, very seriously at no time has there been an acquiescence, a resignation or a consent to this separation.

* * * * * * * * * *

212 I respectfully submit under the law and facts the Court must deny the relief requested by Mr. Uline.

* * * * * * * * * *

III.

EXHIBITS

Plaintiff's Exhibit 6

The State of Ohio, Lucas County, ss.

Ross W. Shumaker, being first duly sworn, deposes and says:

That he is a member of the law firm of Shumaker, Loop & Kendrick, Toledo, Ohio, and has personal knowledge of the facts hereinafter set forth. Said firm of Shumaker, Loop & Kendrick and its predecessors (hereinafter referred to as the "Toledo firm") have performed the services for Mrs. Carolyn Eierman Uline hereinafter set forth, upon employment by her therefor, and is the owner of all claims against her for the payment for said services.

On or about July 24, 1946, said Carolyn Eierman Uline (hereinafter referred to as "client" or "Mrs. Uline") consulted the Toledo firm as to her relationship with her husband, Miguel J. Uline. She related that her said husband, a man of large wealth and income, had, for a number of years, been paying her a grossly inadequate sum for her maintenance, which consisted of irregular payments of about $40.00 per week supplemented with occasional additional amounts; that he was continually demanding that she obtain a divorce from him, and threatening to deprive her of any interest in his estate. She instructed the Toledo firm to proceed by negotiation and/or suit to secure an adequate allowance of maintenance for her and to take any and all steps to protect her marital status and rights. The Toledo firm has continuously from the aforesaid date represented Mrs. Uline as to all of said matters, and the services hereinafter referred to and set forth have been rendered pursuant to said employment.

With the consent of Mrs. Uline the Toledo firm, on her behalf, engaged William E. Leahy, Esq., and James F. Reilly, Esq., attorneys of Washington, D. C., to assist them in all said matters in Washington, D. C. Mrs. Uline was then a resident of Toledo, Ohio, (later moving to Detroit, Michigan) and Mr. Uline was a resident of Washington, D. C. The Toledo firm then examined the law and facts relating to the matters aforesaid, and had negotiations with Mr. Uline in respect thereof. As a result of said negotiations, temporary relief was obtained for Mrs. Uline by an increase of Mr. Uline's payments to her to the sum of $60.00 per week, and the payment to her of an additional lump sum of $1,000.00. When no settlement could be secured with Mr. Uline, a suit was instituted by the filing of a complaint on April 8, 1947, by Mrs. Uline against Mr. Uline in the District Court of the United States for the District of Columbia, being Civil Action No. 1491-47 therein, by which Mrs. Uline sought an order for a reasonable allowance for her maintenance. A decree was entered in said court in said cause, whereby the defendant was ordered to pay the plaintiff the sum of $112.50 per week for her maintenance and $4500.00 for counsel fees, payable in two installments. The order for such counsel fees was later, by agreement of counsel, reduced to $4000.00 payable in a cash lump sum. In the above matters the Toledo firm was associated with said Messrs. Leahy and Reilly, and of said $4000.00 the Toledo firm received $2265.00 to apply on its fees and expenses.

On or about January 30, 1950, Mr. Uline filed a suit for divorce against Mrs. Uline in the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Broward County, being Cause No. 15016 in Chancery therein. The Toledo firm, by and with the consent of client, associated with themselves for the defense of said cause R. R. Saunders, Esq., an attorney of Fort Launderdale, Florida. Preparations were made by counsel, by way of examination of law and facts, for the defense of said cause, but it was dismissed without prejudice by plaintiff on February 16, 1950.

On or about March 23, 1950, Mr. Uline again filed a suit for divorce against Mrs. Uline in the aforesaid Florida Court. The Toledo firm and said R. R. Saunders, Esq. proceeded to prepare for the defense of said suit. An answer was filed therein, but the case was dismissed by plaintiff on or about August 24, 1950. By agreement of counsel Mr. Uline paid $500.00 to apply on the defendant's cost of counsel. Of said sum the Toledo firm received $250.00.

Some time prior to October 28, 1950, Mrs. Uline was informed that Mr. Uline claimed he had obtained a divorce decree from Mrs. Uline in some foreign country (later determined to be Mexico) and claimed to have married one Elva Houseman. Whereupon, on October 28, 1950, the Toledo firm and Mr. Saunders, representing Mrs. Uline, filed her complaint in the aforesaid Florida Court in Chancery Cause No. 15728 therein seeking a declaratory judgment decreeing her to be the lawful wife of said Miguel J. Uline and for other relief. Several hearings were held on preliminary matters in said cause, but the same was subsequently dismissed after Mr. Uline had filed the present suit for divorce against her, in the United States District Court for the District of Columbia, being Civil Cause No. 587-51 therein.

In said presently pending suit for divorce by Mr. Uline, the defense thereof on behalf of Mrs. Uline has been by the Toledo firm, and Messrs. Leahy and Reilly.

Exhibit "1" hereto attached contains a statement of the items of service rendered by the Toledo firm, as above referred to, which services were and are of the reasonable worth and value of $7,500.00.

Exhibit "2" hereto attached is a statement of debits and credits in the account of Mrs. Uline with the Toledo firm. As shown thereon, Mrs. Uline is indebted to the Toledo firm in the sum of $4,933.13, and a bill therefor has been rendered to her.

IN TESTIMONY WHEREOF, Ross W. Shumaker has hereunto set his hand this 25th day of November, 1952.

ROSS W. SHUMAKER

Sworn to before me and subscribed in my presence on this 25th day of November, 1952.

JOANNE E. ROSE
Notary Public, Lucas County, Ohio

My Commission Expires 7-15-55.

Plaintiff's Exhibit 7

234 IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1491-47

CAROLYN ULINE, 2250 Torrey Hill Drive, Toledo, Ohio, *Plaintiff*,

v.

MIGIEL J. ULINE, Broadmoor Hotel, 3601 Connecticut Avenue, N. W., Washington, D. C., *Defendant*.

Filed Apr 8 1947

COMPLAINT FOR MAINTENANCE AND INJUNCTION

1. Jurisdiction is founded on Title 11, Section 306 of D. C. Code (1940).

2. The plaintiff is a citizen of the United States and a resident of the State of Ohio. The defendant is a citizen of the United States and a resident of the District of Columbia.

3. The plaintiff, Carolyn Uline, and the defendant, Migiel J. Uline, were intermarried on or about June 18, 1895. Two children were born of said marriage, both of whom are adults. The defendant is now over seventy-two years of age, and the plaintiff is over sixty-nine years of age.

4. About the year 1930, the defendant deserted the plaintiff, and ever since has lived separate and apart from her, and has refused and neglected to discharge his marital obligations. At the time that defendant so deserted plaintiff, he moved to Washington, D. C., where he has resided ever since. He is engaged in extensive business enterprises, principally in Washington, including the operation of an extensive ice manufacturing and marketing business known as "Uline-Ice", and the operation of a large arena wherein

he promotes spectacular shows, athletic contests, sports, and recreational activities. Defendant has been very successful financially in his various business enterprises and is now possessed of large wealth, the amount of which is unknown to plaintiff but which, on information and belief, she alleges to be over a million dollars. The
235 plaintiff, on information and belief further alleges that defendant has a large income from said enterprises and from his property and assets the amount of which is unknown to her, and his cash income is largely augmented by services and supplies which are furnished by, or charged to, his business enterprises.

5. Notwithstanding defendant's large wealth and income, he has continuously failed and refused to maintain and support plaintiff in accordance with her reasonable needs and his ability to pay. Defendant has intermittently made small remittances to plaintiff averaging only about fifty dollars per week, and recently gave her one check for one thousand dollars, all of which is totally inadequate to maintain and support plaintiff in the manner to which she is entitled and for which defendant is amply able to provide. At various times, plaintiff has been dependent upon her children for money wherewith to meet her expenses.

6. Defendant threatens to dispose of part or all of his property and assets, and to institute groundless proceedings for divorce from plaintiff in some foreign jurisdiction, and will do so to the great prejudice of plaintiff, unless restrained and enjoined by this Court from so doing.

Wherefore, plaintiff prays that defendant be ordered to pay to plaintiff a reasonable allowance for her maintenance and support and for counsel fees during the pendency of this action; that defendant be temporarily restrained and enjoined from disposing of any of his property and assets and from instituting any action for divorce from plaintiff in any foreign jurisdiction; that upon final hearing hereof,

plaintiff be awarded a permanent and proper allowance from defendant for her maintenance and support; that defendant be required to pay plaintiff's counsel fees herein and the costs of this proceeding; and for all such
236 further and other relief to which plaintiff is entitled in the premises.

FRASER, SHUMAKER, KENDRICK & WINN
Fraser, Shumaker, Kendrick & Winn
Attorneys for Plaintiff
7th Floor Home Bank Bldg.,
Toledo, Ohio.

Of Counsel:
WILLIAM E. LEAHY
William E. Leahy
JAMES F. REILLY
James F. Reilly
821 15th Street, N.W.
Washington, D. C.

THE STATE OF OHIO, LUCAS COUNTY, ss.

Carolyn Uline, being first duly sworn, says that she is the plaintiff in the above action; and that the facts stated in the foregoing complaint are true.

CAROLYN ULINE

Sworn to before me and subscribed in my presence this 25th day of January, 1947.

(SEAL)

C. I. BITZ
Notary Public
Lucas County, Ohio
My Commission Expires 1-7-48

• • • • • • • • • •

237 Filed Jun 9 1947

ANSWER TO COMPLAINT FOR MAINTENANCE AND INJUNCTION

Comes now the defendant in the above-entitled action and for answer to the Complaint for Maintenance and Injunction states to this Honorable Court as follows:

1. Defendant admits paragraphs 1, 2 and 3 of the Complaint.

2. Defendant denies all of paragraph 4, with the exception that about the year 1930 he moved to Washington, D. C., where he has resided ever since. For many years prior to 1930 the plaintiff subjected defendant to cruel and inhuman treatment and when defendant sold his ice manufacturing business in Cleveland, Ohio, he came to Washington to establish an ice manufacturing business here, plaintiff made no effort and steadfastly refused to come to Washington with defendant, but on or about April, 1930, moved to Toledo, Ohio, where she since has resided. Since that time plaintiff has lived separate and apart from defendant, but he has maintained her through regular monthly payments in accordance with her reasonable needs and his ability to pay.

3. Defendant denies all of paragraph 5, with the exception that he has made payments to the plaintiff averaging $50.00 per week and recently gave her one check for $1,000.00.

4. Defendant denies all of paragraph 6, and by way of defense says that he does not contemplate any sale of his property and other assets, and has not, and does not, intend to institute proceedings for divorce from plaintiff in any foreign jurisdiction.

238 WHEREFORE, the premises considered, defendant prays:

(1) That the complaint for maintenance be dismissed with all costs to Plaintiff.

(2) That the injunction be denied.

(3) And for such other and further relief as the defendant may be entitled.

M. J. Uline
Migiel J. Uline, *Defendant.*

Pierson and Ball
By Frederic J. Ball
Frederic J. Ball
Counsel for Defendant,
519 Munsey Building,
Washington 4, D. C.

District of Columbia: ss.

Migiel J. Uline, being first duly sworn, says that he is the defendant in the above action and that the facts stated in the foregoing Answer are true and correct.

M. J. Uline
Migiel J. Uline

Sworn to and subscribed before me this 9th day of June, 1947.

(seal)

Myrtle A. Haffer
Notary Public, D. C.
My Comm. Expires April 30, 1949

Plaintiff's Exhibit 8

Filed Feb 7 1950

JUDGMENT FOR PERMANENT MAINTENANCE AND COUNSEL FEES

Upon consideration of the complaint for maintenance filed herein and the cause having come on to be heard before this Court on February 6, 1950, and it further appearing that the parties have consented to the relief herein granted, as indicated by the signatures of their attorneys affixed hereon, as well as the signatures of the parties themselves, it is by the Court this 7th day of February, 1950

ORDERED that the defendant, Migiel J. Uline, pay to the plaintiff, Carolyn Uline, the sum of One Hundred Twelve Dollars and Fifty Cents ($112.50) per week as permanent maintenance so long as the defendant, Migiel J. Uline, shall live, the first payment of One Hundred Twelve Dollars and Fifty Cents ($112.50) to be made on the 11th day of February, 1950, and a similar amount on each succeeding Saturday until the further order of this Court, and by agreement said payments shall not be decreased by or through any proceedings in any jurisdiction other than the District of Columbia, and it is further

ORDERED that the defendant, Migiel J. Uline, shall pay to Robert C. Dunn and James F. Reilly, counsel for the plaintiff, the sum of Forty Five Hundred Dollars ($4,500) as attorney's fees, in the following manner:

A. $1,500 on or before March 8, 1950

B. The remaining $3,000 on or before September 1, 1950 and it is further

ORDERED that the plaintiff and her counsel shall have execution thereon according to law, and it is further

240 **Ordered** that each party shall pay their own costs herein, and it is further

Ordered that this Court shall retain jurisdiction of these proceedings.

By the Court

Charles F. McLaughlin
Judge

We consent:
Robert C. Dunn
Robert C. Dunn of Shumaker, Loop,
Kendrick & Winn
William E. Leahy and **James F. Reilly**
James F. Reilly
Attorneys for Plaintiff

Pierson & Ball
By **Frederic I. Ball**
Lowell J. Bradford
Lowell J. Bradford
Attorneys for Defendant

Carolyn Uline
Carolyn Uline

Migiel J. Uline
Migiel J. Uline

Plaintiff's Exhibit 9

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR BROWARD COUNTY.

IN CHANCERY

No. 15154

Filed for Record Mar 23 2:26 PM 1950 Ted Cabot, Clerk Circuit Court, Broward County, Fla.

M. J. ULINE, *Plaintiff,*

v.

CAROLYN EIERMAN ULINE, *Defendant*

BILL OF COMPLAINT

Comes now M. J. ULINE, plaintiff, and brings this his bill of complaint for divorce against CAROLYN EIERMAN ULINE, defendant, and says:

I.

That plaintiff is an actual and bona fide resident of the State of Florida, and has been such a resident for more than 90 days last past. The residence of the defendant, Carolyn Eierman Uline, is 1913 McNichols Road, Detroit, Michigan. Both plaintiff and defendant are more than 21 years of age.

II.

Plaintiff and defendant were married June 18, 1896, and lived together as husband and wife until February 1, 1931, at which time the defendant, disregarding her marriage vows, deserted said plaintiff, and the said defendant is guilty of willful, obstinate, and continued desertion of the plaintiff for a period of more than one year prior to the filing of this bill of complaint.

III.

Two children were born of this marriage, Mrs. J. P. Pratt and Mrs. E. T. Capron. Both are married and long since more than 21 years of age.

IV.

Plaintiff shows that the desertion of the plaintiff by the defendant has been continuous from the 1st day of February, 1931, until this date.

V.

Plaintiff also shows that the desertion of the plaintiff by the defendant was without cause, that during their entire married life he was a faithful and devoted husband, and that he gave her no cause for leaving or deserting him.

VI.

Plaintiff further alleges and shows that defendant, Carolyn Eierman Uline, has been guilty of habitual indulgence in a violent and ungovernable temper and of extreme cruelty to plaintiff, such as to cause plaintiff grave bodily harm and injury to his health, all of which rendered his life with the defendant an oppressive and intolerable burden; that defendant has on many occasions prior to the date of separation indulged in violent fits of temper during which she would lose all sense of reason, and that during such outbursts of temper defendant has humiliated plaintiff in front of guests, and that during such prolonged periods of time the defendant made life miserable for the plaintiff by her constant nagging, fussing, bickering, and by calling plaintiff insulting, objectionable, and opprobrious names.

VII.

Plaintiff further shows unto the Court that although he furnished a nice house for defendant and himself to live in that at no time during the last 10 years of their married life did they have a home. When plaintiff would come into the home he was only allowed to sit in certain of the least desirable chairs of the house. Under no circumstances was he permitted to sit on any of the settees in the living room. If he should put any paper on the floor or on the table or if he should smoke in the living room, bedroom, hallway, or any other part of the house, defendant would fly into a rage and abuse him to the point where he would have to leave the house to obtain a little peace of mind. Whenever plaintiff would come into the house and sit in one of the forbidden chairs papers were immediately spread around it so that if he should have the effrontery to smoke no ashes would touch the floor. Whether plaintiff ever became so bold as to smoke or not, that was his first instruction upon taking his seat was that he should sit in this chair or that chair. Plaintiff was never permitted to take a shower in his own bathroom because the water spattered all over the floor.

Plaintiff came home with his wife once after being at one of her social functions, and he had a serious illness on the way home and was in great pain and suffering. Immediately upon arriving at the house he urged his wife to call a doctor. Although his wife saw that he could not stand erect, could not walk up the stairs, and could not himself reach the telephone, upon his request for a physician she replied that she would get the physician in due course, and she was three hours calling a doctor when her husband was hanging between life and death. Plaintiff's response to him upon his urgent demands for help was that she had no sympathy for him, that he was not sick, that he was just faking illness, and that he was not going to put anything like that over on her.

During their earlier days of married life plaintiff only had a limited income from his labors but defendant spent money very freely and lavishly, always spending more than plaintiff could make. Defendant ran up many bills at ladies' clothing stores and at other stores in buying ladies' wearing apparel for herself, and by so doing plaintiff was always broke and without funds, and the bills mounted so high until his limited credit was destroyed. Defendant knew well plaintiff's earnings and his income, and she knew that he could not afford to dress her as she wanted to dress and to give her the social luxuries which she demanded, but she still insisted upon buying the finest dresses, furs, coats, and jewelry in keeping with the latest styles for ladies.

Plaintiff seldom had a meal in peace in his house as defendant always had something to nag and fuss about, and if plaintiff would suggest something that might be had for dinner that was the very food that would not be served, as defendant had what she wanted and not what anyone else wanted, and if plaintiff should raise the slightest protest he was told to take it or leave it and be happy about it or get out.

Plaintiff did everything he could to meet the social demands of the defendant, but she wanted to be a social leader and dress in the most stylish and up to date fashion and wear the best of clothes, furs, and jewelry, and her one desire was to see her name in the society columns. All of these things kept plaintiff's nose to the grindstone and destroyed all semblance of home life and happiness and contentment in their home.

Defendant was a great bridge fiend. In addition to her social aspirations her one idea was to be a winner at cards. Lunches for plaintiff were never prepared; hence plaintiff after so long a time failed to come at lunch times except once in a great while, and when he would come home he was blessed out for coming and was abused for being late or abused for being ahead of time. No matter how hard plaintiff tried to work with his wife to make their home a happy home, everything he did was wrong until he actually felt like he was a cad and an outcast in his own home. Plaintiff always met all of defendant's demands as far as his finances would permit. There never was a time when plaintiff did not keep defendant supplied with a car.

About 1930 or 1931 plaintiff accumulated sufficient funds to buy defendant a nice home, and he gave her a nice home in Toledo, Ohio, in Edgewater Park. Defendant promptly decided that was not good enough for her, and without notice to plaintiff she planned the sale and made the sale of this house and put the money in the Bank to her own individual credit.

All of the foregoing has made plaintiff's life with defendant an intolerable and unbearable burden. His health has been destroyed, and further attempted cohabitation by the plaintiff with the defendant is dangerous and impossible.

WHEREFORE, plaintiff prays:

(a) That this Court enter a decree forever annuline the bonds of matrimony existing between this plaintiff and the defendant and granting unto the plaintiff an absolute divorce of and from said defendant.

(b) That this Court issue a citation to the defendant directing her to appear and answer this bill of complaint.

THOMAS F. FLEMING & SONS

By /s/ T. F. FLEMING
Attorneys for Plaintiff

Filed for Record Apr 21 3:55 PM 1950 Ted Cabot, Clerk Circuit Court Broward County, Fla.

ANSWER TO BILL OF COMPLAINT

COMES NOW CAROLYN EIERMAN ULINE, the defendant in the above entitled cause, by and through her undersigned attorneys, and for answer to the bill of complaint heretofore filed in the cause says:

I.

Answering Paragraph I of said bill, the defendant admits that her residence is 1913 McNichols Road, Detroit, Michigan, and that the plaintiff and the defendant are more than 21 years of age and says that the defendant will be 73 years of age on April 23, 1950, and the plaintiff will be 76 years of age on November 29, 1950. Further answering said paragraph, the defendant denies that plaintiff is an actual and bona fide resident of the State of Florida and that he has been such resident for more than 90 days before the institution of this suit and says that the plaintiff is an actual and bona fide resident of Washington, D. C. and that the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Broward County, has no jurisdiction over the person of the plaintiff, nor has said court the legal right to hear or determine the subject-matter of this suit because of its lack of jurisdiction, and this defendant prays this court to take the proof as to the plaintiff's residence prior to any hearing on the merits of this case and prior to the granting of any relief asked for by the plaintiff in his bill of complaint.

II.

Answering Paragraph II of the bill of complaint, the defendant admits that the plaintiff and defendant were married and lived together as husband and wife until February 1, 1931, but alleges that the date of such marriage was June 18, 1895. Defendant denies that she ever deserted the plaintiff or that she is guilty of wilful, obstinate, and continuous desertion of the plaintiff for a period of more than one year prior to the filing of the bill of complaint, but says that on or about February 1, 1931, the plaintiff himself deserted and abandoned the defendant.

III.

Answering Paragraph III of the bill of complaint, the defendant admits that two children were born of the marriage of the parties and that one is now Mrs. J. P. Pratt and the other is now Mrs. E. T. Capron and that both are married and over the age of 21 years.

IV.

Answering Paragraph IV, the defendant emphatically denies any desertion of the plaintiff by the defendant and says that the plaintiff himself deserted the defendant on or about the 1st day of February, 1931, and that the plaintiff's desertion of the defendant has been continuous from said date.

V.

Answering Paragraph V of the bill of complaint, the defendant emphatically denies any desertion of the plaintiff by the defendant and also emphatically denies that during their entire married life, or for any great period thereof, the plaintiff was a faithful and devoted husband and states that while the defendant never deserted the plaintiff she denies that the plaintiff never gave the defendant cause for leaving or deserting the plaintiff.

VI.

Answering Paragraph VI of the bill of complaint, the defendant emphatically denies that she has been guilty of habitual indulgence in a violent and ungovernable temper or of extreme cruelty to plaintiff, such as to cause plaintiff grave bodily harm and injury to his health or otherwise and emphatically denies that she did anything which rendered the plaintiff's life with the defendant an oppressive and intolerable burden she denies that on many occasions prior to the date of their separation she indulged in violent fits of temper during which she would lose her sense of reason or that she otherwise indulged in fits of temper; she specifically denies any such outbursts of temper and denies that during outbursts of temper or otherwise she has humiliated the plaintiff in front of guests or that she has otherwise humiliated the plaintiff, but alleges that throughout their married life she has always been very considerate of the plaintiff. Further answering said paragraph she emphatically denies that during prolonged periods of time, or for short periods of time for that matter, she made life miserable for the plaintiff by constant nagging, fussing, bickering, or by calling plaintiff insulting, objectionable and opprobrious names and denies that she ever conducted herself in any such manner as is alleged in said paragraph or that she ever made the plaintiff's life miserable in any way.

VII.

Answering Paragraph VII of the bill of complaint, the plaintiff denies that the plaintiff ever furnished a nice house for the defendant and himself to live in and denies that at no time during the last ten years of their married life did they have a home; she denies that when the plaintiff would come into the home he was only allowed to sit in certain of the least desirable chairs and denies that under no circumstances was he permitted to sit on any of the settees in the living room; she denies that if the plaintiff should put any paper on the floor or on the table or if he should smoke in the living room, bedroom, hallway, or any other part of the house, she would fly into a rage and abuse the plaintiff or that she ever conducted herself in any way that made it necessary for the plaintiff to leave the house to obtain peace of mind. Further answering said paragraph, she denies that any chairs were "forbidden" to the plaintiff and denies that when he would sit in any of the chairs in the house papers were spread around it so that no ashes would touch the floor, if the plaintiff should smoke; and she further denies that the plaintiff was told which chair to sit in or that any chair in the house was denied the plaintiff and denies that the plaintiff was never permitted to take a shower in his own bathroom.

Further answering said paragraph, the defendant denies that she ever failed or refused to call a doctor when the plaintiff was ill, as is alleged in said paragraph; she denies that she spent money freely and lavishly or that she spent more than the plaintiff could make or that she ran up bills at clothing stores or other stores in buying apparel for herself or otherwise or that she ever spent money in such a way as to leave the plaintiff broke and without funds or that she ever did anything to destroy or even jeopardize the plaintiff's credit. Further answering said paragraph, the defendant denies that she ever wanted to dress herself beyond the limits afforded by the plaintiff's income or that she ever demanded social luxuries and denies that she insisted upon buying the finest dresses, furs, coats, and jewelry in keeping with the latest styles for ladies, as is alleged in said paragraph.

Further answering said paragraph the plaintiff denies that the plaintiff seldom had a meal in peace in his home and denies that the defendant nagged and fussed, as is alleged in said paragraph, and denies the plaintiff's desires for certain foods were met with opposition on her part and denies that the plaintiff was not served the food he desired.

Further answering said paragraph, the defendant denies that she made any "social demands" of the plaintiff, or that she wanted to be a social leader and dress in the most stylish and up-to-date fashion and wear the best of clothes, furs and jewelry and that her one desire was to see her name in the society columns or that her manner of living in any way kept the plaintiff's nose to the grindstone or destroyed all semblance of home life and happiness and contentment in their home, as is alleged in said bill of complaint.

Further answering said paragraph, the defendant denies that she was ever a great bridge fiend and says that actually she never played bridge, that her social aspirations were limited to the natural desire on the part of any wife and mother to create a comfortable and happy home for her husband and their children, that she never had any desire to be a winner at cards; she denies that lunches for plaintiff were never prepared and while she admits that plaintiff failed to come home at lunch time except once in a great while she denies that when he would come home he was blessed out for coming and was abused for being late or abused for being ahead of time or abused in any manner. Further answering said paragraph, the defendant denies that the plaintiff tried to work with his wife to make their home a happy one, and says that while she is without knowledge as to what his feelings regarding being a cad and an outcast in his own home might have been, she alleges that if he had any such feelings they were induced by his own behavior, as more fully hereinafter commented upon. Further answering said paragraph the defendant denies that she ever made demands of the plaintiff, of an excessive nature, as is implied in said paragraph, or otherwise and denies that the plaintiff continuously supplied her with a car, as is alleged, and says that while the plaintiff did at times provide the defendant with the use of an automobile, he never bought her clothing beyond her actual needs, she never enjoyed any of the luxuries of life, and was denied many of the comforts and advantages which the plaintiff was financially able to furnish and provide.

Further answering said paragraph, the defendant denies that in the year 1930 or 1931 the plaintiff bought her a nice home and says that inasmuch as he did not do so the other allegations regarding her sale of the home require no answer.

Further answering said paragraph the defendant emphatically denies that she conducted herself in the manner alleged and implied in said paragraph and denies that the plaintiff's life with the defendant was made an intolerable and unbearable burden through any conduct on her part, or that his health has been destroyed or that further cohabitation by the plaintiff with the defendant is dangerous to the plaintiff.

VIII.

Further answering the bill of complaint, the defendant alleges that plaintiff and defendant were married in Cleveland, Ohio, on June 18, 1895, and resided there continuously until about 1921, when they moved to Toledo, Ohio, where they continued to reside until about 1921, when they moved to Toledo, Ohio, where they continued to reside until about the year 1930. Thereafter they moved back to Cleveland where they resided at the time the plaintiff deserted the defendant, and plaintiff moved to Washington, D. C., where he has since resided. After plaintiff deserted her, defendant moved back to Toledo, Ohio, where she could be near her chidren, and where she resided until the past year, when she moved to Detroit, Michigan, where both of her childern now reside.

During the entire period plaintiff and defendant resided together, defendant performed faithfully her marital duties and obligations, and did the very best she could to maintain and preserve the home and a happy marriage relation. There were born of the marriage two daughters, both of whom now live in Detroit, Michigan, and she and the plaintiff now have two grandchildren and five great grandchildren.

Defendant says that while she and the plaintiff were living together she practiced the utmost economy in maintaining the home, was never permitted to employ servants, but did all of her own work, including washing and ironing, and was obliged to operate on a strict budget.

Defendant says that after she and the plaintiff moved to Toledo, about 1921, the plaintiff did purchase a house in Point Place near Toledo, where they lived for several years. This was a very modest home, unplastered, and heated with a base burner. This house was placed in the name of the defendant, and about 1937, with the full knowledge and consent of the plaintiff, it was sold on land contract for the sum of one thousand nine hundred fifty dollars ($1,950).

Defendant says that during the early years of their marriage and while the children were growing up, the plaintiff and defendant lived together quite happily; but that in the later years of their marriage plaintiff began associating and consorting with other women and continued to do so until the time that he deserted the defendant, about February 1931. That it was his practice for many years to be absent from home for periods of time, both day and night, and he refused to give any explanation of his whereabouts or activities. That plaintiff has openly associated with other women, both prior to and since his desertion of the defendant, and defendant says that for several years last past the plaintiff has been consorting with a woman who defendant is informed is presently staying in the home of the plaintiff in Fort Lauderdale, Florida.

Defendant further says that the plaintiff has been quite successful in his business life, and is engaged in extensive business enterprises, principally in Washington, D. C., including the operation of an extensive ice manufacturing and marketing business, known as "Uline-Ice", and the operation of a large arena wherein he promotes spectacular shows, athletic contests, sports and recreational activities. Plaintiff is possessed of substantial wealth, the amount of which is unknown to the defendant, but which on information and belief she alleges to be well over a half million dollars. Plaintiff has a large income from his enterprises and property, the exact amount of which is unknown to defendant, and his cash income is largely augmented by services and supplies which are furnished by or charged to his business enterprises.

Defendant says that for many years following plaintiff's abandonment of defendant he sent to her for her support and needs the sum of forty dollars ($40) a week, which weekly sum was increased to fifty dollars ($50) a few years ago and then to sixty dollars ($60) about two years ago. That these amounts were wholly inadequate to maintain and support the defendant in the manner to which she was entitled, nor did these amounts accord with the plaintiff's ability to provide for her. From time to time and for many years the plaintiff has threatened the defendant with suits for divorce in jurisdictions other than that in which he was living and, knowing his own lack of grounds therefor, has, from time to time, sought to induce the defendant to obtain a divorce upon terms dictated by himself.

Defendant says that for many years, while she has been required to practice the utmost economy in order to pay rent and living expenses from the amounts the plaintiff has paid to her, the plaintiff himself has lived luxuriously in Washington, D. C., and has for many years spent his winters in Florida; that he has recently built a home at 2700 Delmar Place, Fort Lauderdale, which the defendant is informed cost in excess of fifty thousand dollars ($50,000), the title to said property being in the name of The M. J. Uline Company. Upon information and belief defendant says that plaintiff is presently, and has been for some time, staying in this home, with servants at his disposal, and that the woman hereinbefore referred to is also staying in this home.

On or about April 8, 1947, in order to protect her rights, the defendant filed a complaint against the plaintiff for maintenance and injunction in the District Court of the United States for the District of Columbia, to which plaintiff answered, admitting his residence in the District of Columbia. Said suit was partially tried and then settled on February 7, 1950, and a copy of the judgment, signed by the parties and entered by the said court, is hereto attached and made a part hereof. That the plaintiff is now in default under said judgment for four weekly payments of one hundred dollars and fifty cents ($112.50) each.

That the defendant is a woman of advanced years and has considerable trouble with her eyes; that she has no means of her own and her only income consists of the payments, when made, which the plaintiff was ordered to pay to her under the above mentioned judgment entered on February 7, 1950, by the District Court of the United States for the

District of Columbia. That the plaintiff should be required, not only to keep the weekly payments so ordered by said judgment, but he should be required to actually provide for the defendant in the manner to which she is entitled and in accord with the plaintiff's ability to provide for her, the plaintiff, as aforesaid, being a man of considerable wealth, and the plaintiff should also be required to advance to the defendant monies in an amount sufficient to pay the expenses incidental to her defense of this suit, including temporary attorneys' fees, suit money, and the cost of a trip to Florida so that she may consult in person with her attorneys and also testify in the cause, which trip would take at least ten days; that, moreover, on account of her advanced age and the trouble she has with her eyes, it will be necessary that the defendant have with her, on such trip, a companion-nurse, whose expenses during such trip the plaintiff should also be required to advance; that it is believed that the expenses of such a trip, for the defendant and her companion-nurse would amount to at least one thousand dollars ($1,000.); all of which the plaintiff should be required to pay and is well able to pay.

Furthermore, in view of the defendant's complete dependence for her support and maintenance upon the payments she receives from the plaintiff and inasmuch as the plaintiff is now seriously in default under the provisions of the judgment of the District Court of the United States for the District of Columbia, the defendant submits that the plaintiff should not be allowed to proceed with or prosecute this suit until such time as he shall have cured such default and is in good standing under said court decree.

The defendant hereby expressly reserves her right to apply to the court at any time for temporary alimony, suit money and expenses, the need for same having been hereinabove set forth.

WHEREFORE, the defendant, CAROLYN EIERMAN ULINE, having fully answered the bill of complaint, prays that the relief asked for by the plaintiff, M. J. ULINE, be denied, but, if such relief is granted, that she be awarded permanent alimony commensurate with her station in life and that the payment for such alimony be secured in such manner as to the court may appear proper under the circumstances and that she be awarded such sums as may be necessary to properly compensate her attorneys for their services in this suit and all her other expenses in connection therewith.

COUNTERCLAIM

AND for her counterclaim against the plaintiff, M. J. ULINE, the defendant, CAROLYN EIERMAN ULINE, reavers, all the matters hereinabove alleged.

WHEREFORE, CAROLYN EIERMAN ULINE, by way of counterclaim prays that she be awarded as against the said M. J. ULINE such permanent alimony as is commensurate with her station in life, and that the payment thereof be secured in such manner as to the court may appear proper in the circumstances, and that she be awarded such sums as may be necessary to properly compensate her attorneys for their services in this suit and all her other expenses in connection herewith; that the plaintiff forthwith be required to pay over to the counterclaimant the sum of $450.00, the amount necessary to place himself in good standing under the order of the District Court of the United States for the District of Columbia hereinabove mentioned under which the plaintiff was ordered to pay the defendant the sum of $112.50 each and every week, and that he thereafter be required to continue to make the weekly payments called for thereunder, and that this suit be held in status quo until such time as the plaintiff shall have cured his default under such order of court and shall have paid the defendant all sums due her thereunder, and, further, that as heretofore requested in her answer, this court require that proof be taken as to the plaintiff's residence prior to any hearing on the merits of this case and prior to the granting of any relief asked for by the plaintiff in his bill of complaint.

SHUMAKER, LOOP, KENDRICK & WINN,
and SAUNDERS, BUCKLEY & O'CONNELL

By /s/ R. R. SAUNDERS
Attorneys for Defendant
and Counterclaim

* * * * * * * * * *

ORDER OF DISMISSAL

This cause coming on to be heard upon motion of the plaintiff for an order of dismissal, and the Court being fully advised in the premises, it is

ORDERED, ADJUDGED, AND DECREED that this suit be dismissed at plaintiff's cost and without prejudice.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this 24 day of August, 1950.

C. E. CHILLINGWORTH
Circuit Judge

Plaintiff's Exhibit 10

THE FIRST CIVIL COURT, BRAVOS DISTRICT, CITY OF JUAREZ, STATE OF CHIHUAHUA, REPUBLIC OF MEXICO.

Case No. 964/950

MIGIEL JOHN ULINE, *Plaintiff*,

vs.

CAROLINE EIERMAN ULINE, *Defendant*.

RODOLFO SILVA, Clerk of the First Civil Court, Bravos District, State of Chihuahua, Mexico, CERTIFIES:

That on July 5, 1950 in Ciudad, Juarez Chihuahua, this Court—made its findings in the divorce suit filed by the special attorney for Mrs. MIGIEL JOHN ULINE, against CAROLINE EIERMAN ULINE, as follows:

On June 10, 1950, the special attorney for Mr. MIGIEL JOHN ULINE, appeared before this Court and filed a suit for necessary divorce against MRS. CAROLINE EIERMAN ULINE.

THE PLAINTIFF ALLEGES AND PRAYS:

1.—That the grounds for divorce are: Cruelty, More than a—year's separation without seeking a divorce (since March 15, 1937)—and Incompatibility of temperaments.

2.—That the parties were married on June 18, 1896 in Cleveland, State of Ohio, United States of America.

* * * * * * * * * *

IT IS ORDERED, the dissolution, with all its legal consequences, of the marriage existing between MIGIEL JOHN ULINE and CAROLYN EIERMAN ULINE, contracted on June 18, 1896 in Cleveland, State of Ohio, United States of America.

The parties are free to remarry.

Defendant's Exhibit 1

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 9, 1931)

Dear Carrie:

Many thanks for the cigar lighter. If you have anything like shirts or a straw hat there that I could use please send them. The only shirts I may have there that are any good would be the monogrammed shirts. Those that were made to order. The only hat that may be any good would be the panama I had last summer.

M. J.

Defendant's Exhibit 2

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 21, 1932)

Dear Carrie:

Many thanks for the present.

Yours

M. J.

Defendant's Exhibit 3

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated February 21, 1933)

Monday 10 P.M. 2/20/33

Dear Carrie:

Do not understand your statement in your last letter when you say I do not write. I did write, but it now seems that more letters will make things more unpleasant to us both, so why continue? Why did I leave you? You know why I left you. Because I could not possibly stand it any longer. I told you time and again that you were making things so that I would be obliged to leave you. Why should you come to Washington? There is absolutely nothing to be gained by coming here. It only complicates matters more. Please do not come. Fail to see why you should complain about bad times. I venture to say that there are not many families in Toledo receiving $40 per week net. Do you realize that it is enough to compel you to pay income tax on it? I don't spend more than that any week for all my expenses and I have more to pay for many things than you have and must work besides.

Your statements of love came rather late. Noted what you said about theatres. Things must be bad in Toledo, but then they are bad everywhere.

Am sorry for Ed. and Billy and also Myrtle and I wish I could help them.

Nothing new here. It is very cold and business is bad.

With best wishes,

However I will make out a combined tax report so you will not have to pay.

M. J.

Defendant's Exhibit 4

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated December 10, 1933)

Carrie:

Many thanks for the birthday present and the good wishes. The pajamas were very nice.

M.

Defendant's Exhibit 5

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated January 26, 1934)

Jan. 23—34

Dear Carrie:

Glasses arrived OK this morning and match others exactly as they are the same. Nothing new here except that I am finishing trimming machine and expect to start building office this week if plans are approved.

Yours

M.

Defendant's Exhibit 6

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 5, 1934)

Dear Carrie:

Many thanks for the underwear. It just fits.

Mike

Defendant's Exhibit 7

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 17, 1934)

6/15/34

Carrie:

I am returning one of the suits as they are both to small but I have worn one of them.

Suit should be about two sizes longer as they pinch in the crotch.

Yours

M.

Defendant's Exhibit 8

(Letter from plaintiff to defendant mailed from Washingington, D. C. to Toledo, Ohio, dated July 16, 1934)

Carrie:

Never said anything to Billy about no thanks for check, but I did tell her that after receiving check you wanted to send your doctor bill to me. Thanks for tie pin.

M.

Defendant's Exhbit 9

(Letter from plaintiff to defendant mailed from Washingington, D. C. to Toledo, Ohio, dated December 8, 1934)

Dear Carrie:

Many thanks for present and congratulation.

MIKE

Defendant's Exhibit 10

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated April 27, 1935)

Saturday 9 AM 4/27/35

Dear Carrie:

Many thanks for ties. They are very nice.

Enclosed find check.

You may do whatever you wish about Edgewater house. You can pay half of rent to Hahn for taxes and keep other half.

I send Grandma some flowers for Easter, but I do not know if she received them.

I am sorry you are not well and hope you will regain your good health again soon.

Yours

M. J.

Defendant's Exhibit 11

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated January 24, 1935)

Tuesday 1/22/35

Dear Carrie:

Many thanks for picture. I wish you could get a copy made of other picture also, as I lost nearly all of my pictures, in fact I have none of the old pictures at all. You may tell me what the expense is and I will add it to your check. Awfully sorry about poor Mrs. Stover and I sometimes wonder if Grace is not almost in the same fix Anna was. Inclosed find letter from Molly. Nothing new here except that Mrs. Shepard was here yesterday.

Cordially

M. J.

Defendant's Exhibit 12

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated April 2, 1935)

Carrie

Many thanks for photo. It arrived this morning. Here is hoping you are well.

M.

Defendant's Exhibit 13

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated January 15, 1935)

Monday 5 PM. 1/14/35

Dear Carrie:

Many thanks for the package. It will come in handy. Had a letter from Martin Hopkins and he is in Denver, Colo. without money or a job. Fixed it up so he could come here, but I don't want him to work here. To many relatives is not good. Sam is getting so big that his clothes don't fit him, getting fatter every day. Donald is to lazy for me. I have him working in a little shop that is making my new machine, but they say he is N. G. He will have to look for a job elsewhere.

Nothing new otherwise. I feel fine. Weather wonderful. Business fair.

Sincerally

M.

Defendant's Exhibit 14

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated July 23, 1935)

Monday July 22—35

Dear Carrie:

Answering yours of recent date. At the rear corner of house nearest kitchen door and house next door, the sewer enters the kitchen. By digging a hole there, they will find a place to get in to the sewer with a cable without breaking tile. However the best way to kill tree roots is to use some sort of sewer cleaner fluid. You may know what it is. Pour a whole can of it in the sink and let it stand. If it does not help, try another can of it. This fluid will destroy all growth in sewer with very little expense. You can at least try it. It always worked before. They charge to much for cabling sewer as most anyone can do it, if done as I told you. It is alright to pay Hahn as you said. Does Hahn keep up the lawn What does he do for the $40 per year Let us hope that you will be well again soon. Keep me posted on Doctor bills.

Sincerally

MIKE

Defendant's Exhibit 15

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 19, 1936)

Dear Carrie:

The pajamas arrived and they are very pretty.

Many thanks.

M.

Defendant's Exhibit 16

(Letter from plaintiff to defendant mailed from Washington, D. C. dated August 5, 1938)

Aug 5—1938

My Dear Carrie:

Inclosed find check for $200.00.

Sometime ago both Billy and Patricia talked to me about an increase in your allowance. I told both that I believed your allowance enough and that if more was given, which

I can not afford, it would only go to your own relatives and especially your sister Rose whom I hate.

However I realize that it is high time for me to make a will. All that I own now is stock in my company. If anything happened to me now that is all you would get and it is doubtful if it would pay dividends after I am gone.

In order to make sure that you will be cared for the rest of your days I have arranged for the following if you will do your part.

1. I will pay you $250. per month as long as I live.

2. I will arrange that a $40,000.00 Insurance policy that you will be paid $250 per month for the rest of your life.

3. You can do as you please with what you save or gain from your $250 per month, but you can get nothing whatever from my estate outside of that as I want to make sure that nothing whatever goes to your relatives and especially Rose.

4. In order to make sure of this however, you must secure a divorce at once in Reno, Nev. so as to get it over with quick.

5. I will pay all your expenses to Reno and for divorce.

Please remember that all of this is done to be sure you are cared for, that all our children be protected and most of all that your relatives can not interfere with my estate *as they would.*

Naturally it would be an easy matter for me to get a divorce as we have not lived together for 8 years or more but I much rather that you would, unless you refuse then I must.

This arrangement would make you independent and still sure of your income.

My will must be made and as soon as possible, so let me hear from you at once.

Sincerally

M. J.

Defendant's Exhibit 17

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated October 4, 1938)

Oct. 4—38

Dear Carrie:

Awfully sorry that you can not see it my way, but it does seem to me that your concern about your children and religion comes rather late in life. You should have thought of that many years ago.

However I am determined and if you refuse then I will. If you put me to any trouble then the expense will be on you. I have tried to show you and have proved that I want to do my part but I will never consent to any arrangement where your sister or any of them will ever get anything that belongs to me or mine.

Now it is up to you but don't let a lawyer get your money.

Sincerally

M. J.

Defendant's Exhibit 18

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated June 19, 1946)

June 18—46

Dear Carrie:

Have been thinking a great deal lately as to how to divide my property and treat everyone alike.

It must always be remembered that I still have a mortgage of nearly Four Hundred Thousand Dollars. As long as I live and stay healthy there is no fear but that I will come out alright, but if anything should happen to me, which is very possible at my age, the mortgagee may take over and then no one would get anything. This would be dangerous for you.

Therefore I have decided that I will obligate the Company with a Contract to pay you ($325) Three Hundred and Twenty-Five Dollars per month for life. This however will be your only interest in my estate and I therefore demand the following:

In order that I may be absolutely sure that you and your family do not interfere with the settlement of my estate, should I die before you.

You must allow me to get a divorce at once without interference of any kind.

Remember I do not intend to marry nor do I go with anyone, nor do I have anyone in mind.

You will receive plenty money this way and I can dispose of my estate as I please.

Kindly let me hear from you on this at once.

Sincerely Yours.

M. J. ULINE

Defendant's Exhibit 19

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated November 26, 1946)

Dear Carrie:

Please remember that extra $1000.00 and increase per week was not given you because of your Toledo Lawyers, for if I hear from them, again, you will be on your own.

Myrtle and Patricia deserve credit for your increase, not your lawyers.

Defendant's Exhibit 20

(Letter from T. F. Fleming to defendant mailed from Fort Lauderdale, Florida to Detroit, Michigan, dated January 6, 1950)

Mrs. Carolyn Eierman Uline
1913 McNichols Road
Detroit, Michigan

January 6, 1950

My dear Mrs. Uline:

As you may know, I have been employed by your husband, Mr. M. J. Uline, to file suit for divorce against you on the grounds of desertion. Mr. Uline tells me that you have no objection to his proceeding with the suit.

Now to serve you it will be necessary to run the advertisement in the paper for 30 days. Mr. Uline does not want to do this and I think it will be far better if it could be avoided, so I suggest that you employ some local attorney, at Mr. Uline's expense, to represent you in the divorce so that time and considerable legal expense may be saved.

I have just talked to Mr. Uline, and he tells me to assure you that he will continue to remit you $60.00 per week during the remainder of your lifetime.

I trust very much that this meets with your approval, and hope you will be kind enough to let me hear from you by return mail.

Very truly yours,

T. F. FLEMING
T. F. Fleming.

TFF/B

Defendant's Exhibit 22

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated January 25, 1933)

Wednesday 5.30 P.M.

Dear Carrie:

Read your letter postmarked Jan. 21st with much interest.

What puzzles me mostly is why you should feel my absence so much now. Why you should be so terribly lonesome now. You certainly never missed me before. At least it never seemed that to me, nor you evidently.

You state how much you are going to do for me or rather are willing to do for me now. You had 35 years to do that and absolutely failed. In fact you failed in everything that could be expected from a wife and mother. Only one thing you really did your part in and that was in being a clean housekeeper, but that was done at the expense of everyone's comfort.

Your people and especially your sister Rose have always been placed ahead of any of your immediate family. It is not my intention to be cruel but it is awfully hard to forget that after 35 years of hard work, always work, always sober and honest and then being without a home and why? That too is hard for me. Truthfully I am afraid to try again. We have tried so many times and the only time that I can honestly say that I was contended was the 4 weeks directly after I bought you your first car. For the present Dear, I think I will continue on as I am, as I am truly afraid to try again. What may happen later remains to be seen. Nothing new here. Cold and raining now and cold weather predicted. Suggest that you write again and then I will answer.

Here is hoping that your health is of the best and with best wishes, I am

M.

Defendant's Exhibit 23

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated April 25, 1933)

Dear Carrie:

Ten Dollars extra for your birthday. May you have many happy returns.

Will send extra $40 next week.

M. J.

Defendant's Exhibit 24

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated January 2, 1934)

Happy New Year. Here is hoping your health will improve as after all that is God's greatest gift.

M. J.

Defendant's Exhibit 25

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated April 28, 1936)

Dear Carrie:

Inclosed find a small check for your birthday. Congratulations. May you have many more of them.

M. J.

Defendant's Exhibit 26

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated February 10, 1934)

Dear Carrie:

Thanks for your letter received today.

You were mistaken about Chust Uline. I said he was BURIED Monday. He died of cancer of the bladder.

Sam started working here yesterday. I promised to pay him $25 per week, but have decided to make it $30 per week. He seems to be happy and fits in well here.

Yours

M.

Defendant's Exhibit 27

(Letter from plaintiff to defendant mailed from Washington, D. C. to Toledo, Ohio, dated April 30, 1940)

Carrie:

Congratulations on birthday. Just returned so neglected to send check sooner.

M. J.

• • • • • • • • • •

Form C-601-D—(5M—1-30-48)

DOM 13 PAGE 482

377896

DECLARATION OF DOMICILE AND CITIZENSHIP

TO THE STATE AND COUNTY TAX ASSESSOR,

Broward COUNTY, FLORIDA:

This is my declaration of Domicile and Citizenship in the State of Florida that I am filing this day in accordance, and in conformity with Chapter 20412 Laws of Florida, Acts of 1941.

I was formerly a legal resident of Washington (City), D. C. (State) and I resided at different hotels--I didn't have a / home anywhere. (Street and Number) However, I have changed my domicile to and am and have been a bona fide resident of the State of Florida since 15th day of October, 1949, and I reside at 2700 Del Mar Place (Street and Number) Fort Lauderdale (City), Broward County, Florida, and this statement is to be taken as my declaration of citizenship, actual legal residence and domicile in the State of Florida.

(Insert here any pertinent facts, such as sale of property or business, or relinquishment of employment at former domicile, removal of family to new domicile, purchase of home, etc.)

Actually I have been a resident of Florida for a number of years but I didn't have a home to live in. I only lived in hotels and apartment houses. I made my plans to move here in 1946 and bought a nice residential lot on Del Mar Place. I have a business in Washington, D. C., that I operate at long distance as much as possible. Being tired of this, I determined to have a home. I came down last Fall, on October 15, 1949, and let a contract about the middle of October 1949 to build my home. It has now been finished and I am living in it.

I have never cast a ballot anywhere for the last several years, and this is another reason for my coming to Florida.

I have a car here, my home is furnished, I am living in it, and this will be my residence, I trust, for all time.

I have given up all apartments and hotels a number of months ago, and shipped my furniture here.

STATE OF FLORIDA
COUNTY OF BROWARD

This instrument filed for record 28 day of Jun 1950 and recorded in book 12 (Dom) on page 482 RECORD VERIFIED
TED CABOT, Clerk of the Circuit Court
Madeline Parkhurst D.C

I FURTHER CERTIFY that I will register at my local address when the registration books reopen, and comply with all other requirements of a legal resident of this State.

I FURTHER CERTIFY that I have no intention to return to my former domicile, and I intend to remain in Fort Lauderdale (City), Broward County, Florida, permanently.

(Name)
2700 Del Mar Place, Fort Lauderdale, Fla.
(Address)
M.J. Uline

Sworn to and subscribed before me this 27th day of January, A. D. 1950.

Martha Brooks (formerly Martha Whiteside)
Notary Public State of Florida at Large

My Commission expires Notary Public. State of Florida at Large. My commission expires February 13, 1952. Bonded by American Surety Co. of N. Y.

(To be executed in duplicate and original filed with Clerk Circuit Court)

Defendant's Exhibit 28

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED MAR 10 1953

Joseph W. Stewart
CLERK

No. 11,677

CAROLYN EIERMAN ULINE,
Appellant

v.

MIGIEL J. ULINE,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Edmund D. Campbell,
Grant W. Wiprud,
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822 Southern Building,
Washington, D. C.

Douglas, Obear & Campbell,
Of Counsel.

No. 11,677

Question Presented

Whether there has been a voluntary separation of the parties from bed and board for five consecutive years without cohabitation, within the terms of Sec. 403, Title 16, D. C. Code (1951).

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,677

CAROLYN EIERMAN ULINE,
Appellant

v.

MIGIEL J. ULINE,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

COUNTERSTATEMENT OF THE CASE

The District Court has found that appellee Migiel Uline is entitled to a divorce from Carolyn Uline on the ground of voluntary separation for more than five years without cohabitation.

The admissions of Mrs. Uline on cross-examination, and the undisputed record, overwhelmingly support the conclusion reached by the District Court. The statutory requirements for divorce are satisfied many times over in the instant case.

The record discloses the following controlling facts which have been ignored or erroneously stated in appellant's brief:

> For the past twenty-three years (that is since 1930), the parties have lived in different cities 800 miles

apart (R. 36), and during that entire period they have never spent a night under the same roof. (R. 34)

For ten years prior to their final geographical separation in 1930 the parties had not cohabited but had lived separate lives under the same roof. (R. 58, 61, 62).

During the past twenty years (that is since 1933) the parties have seen each other on only two or three occasions (except in court litigation)—once at the wedding of their granddaughter, and once or twice at a meal in their daughter's home. On none of these occasions did Mrs. Uline talk about any reconciliation (see p. 9, *infra*).

Mrs. Uline never attempted to see her husband at any time after 1933.

From 1938 (when Mr. Uline first wrote his wife asking for a divorce) until 1946 (when he wrote her again on the same subject) no correspondence whatever passed between the parties, except for birthday or Christmas greetings. In these greetings Mrs. Uline did not propose or discuss reconciliation. (See pp. 9-11, *infra.*)

In 1946 Mrs. Uline, then living in Toledo, retained counsel there to negotiate with her husband for a larger permanent maintenance allowance, and later for a $200,000 property setlement. (R. 120, 52)

In 1947 Mrs. Uline, still living in Toledo, filed suit against her husband in the District of Columbia seeking a judgment against him for *permanent* separate maintenance. (R. 124-126.) In these pleadings she made no tender whatever of any resumption of marital relations. The suit was settled by a consent judgment granting "permanent maintenance" to Mrs. Uline. (R. 129)

> In 1950 Mrs. Uline filed a counterclaim to a suit for divorce which Mr. Uline had brought against her in Florida (which suit he later dismissed without prejudice) in which counterclaim she asked the Florida court to award her "permanent alimony * * * commensurate with her station in life." (R. 145.) In these pleadings she makes no tender whatever of any resumption of marital relations.
>
> Although Mrs. Uline has consistently opposed Mr. Uline's efforts to obtain a divorce she has made no effort whatever during the past twenty years to resume marital relations with him. Her actions during this period have been directed only toward assuring financial security to herself.

After ten years of banishment from his marital bed in Cleveland, followed by twenty-one more years in which he and his wife were separated geographically by some 800 miles, Mr. Uline ill-advisedly obtained a "Mexican" divorce from appellant, (R. 146) and then went through a marriage ceremony with Elva Houseman, with whom he is now living. His present counsel recognizes the invalidity of the Mexican proceedings. It is, however, of the utmost importance that the present anomalous situation between the parties be finally resolved. So, although Mr. Uline was (and is still) desperately ill from repeated coronary attacks and thus was unable to attend the trial of this case, his counsel felt it necessary to proceed to trial on his behalf without the benefit of his presence. This was agreed to by opposing counsel and by the District Court. (R. 22, 119.)

Adequate financial provision has been made for appellant as long as she lives, by the terms of the divorce decree granted by the District Court. The permanent alimony provided for in the said divorce decree is a charge against appellee's estate if he should predecease her. This was accomplished by consent of appellee (R. 20).

Summary of Argument

1. Controlling this case is *Parks* v. *Parks,* 73 App. D.C. 93, 116 F. 2d 556, decided in 1940. This is the leading case in this jurisdiction on the interpretation of the statute providing for divorce after five years' voluntary separation. It has been followed or cited with approval in numerous subsequent cases before this court.[1] To summarize our argument we can do no better than to paraphrase a portion of two paragraphs from that opinion:

> "[Twenty-one] consecutive years of separation had elapsed. The separation was not at first voluntary on the defendant's part; when the plaintiff deserted her, she begged him not to go. But from [1933] on she neither asked him to return nor made any other attempt to bring about a reconciliation. It is perhaps a fair inference that she reconciled herself to separation. But that, we think, is not the question. Even if she did, in fact, wish her husband to return, in the course of time her *silent acquiescence* in the separation made it voluntary in the statutory sense. Desires which are not reflected in conduct have little or no social or legal significance. The law is full of instances in which the will that counts is the apparent rather than the secret will. The liberal purpose of the 1935 amendment points to this construction. *That purpose was to per-*

---

[1] *Hawkins* v. *Hawkins* (1951), 89 U. S. App. D. C. 147, 191 F. 2d 344; *Cocci* v. *Cocci* (1950), 88 U. S. App. D. C. 43, 185 F. 2d 898; *Hurd* v. *Hurd* (1949), 86 U. S. App. D. C. 62, 179 F. 2d 68; *Helfgott* v. *Helfgott* (1949), 86 U. S. App. D. C. 409, 179 F. 2d 39; *Martin* v. *Martin* (1947), 82 U. S. App. D. C. 40, 160 F. 2d 20; *Buford* v. *Buford* (1946), 81 U. S. App. D. C. 169, 156 F. 2d 567; *Butler* v. *Butler* (1946), 81 U. S. App. D. C. 26, 154 F. 2d 203; *Boyce* v. *Boyce* (1946), 80 U. S. App. D. C. 355, 153 F. 2d 229; *Vanderhuff* v. *Vanderhuff* (1944), 79 U. S. App. D. C. 153, 144 F. 2d 509; *Bowers* v. *Bowers* (1944), 79 U. S. App. D. C. 146, 143 F. 2d 158; *Clemens* v. *Clemens* (1944), 79 U. S. App. D. C. 116, 143 F. 2d 24.

> *mit termination in law of certain marriages which have ceased to exist in fact.* This is such a marriage. We think the defendant's silent acquiescence made the separation voluntary, in the statutory sense, within less than [four] years after it began, and therefore more than [seventeen] years before the plaintiff filed this suit. It follows that he is entitled to a divorce.
>
> "* * * the statute does not require that the separation originate in any particular way. It requires only that for five consecutive years the separation be voluntary." [Emphasis added.]

2. And with reference to Mrs. Uline's admission that for ten years prior to their geographical separation in 1930 she and Mr. Uline lived separate lives under the same roof without cohabitation, this court (in a comparable situation) has said:

> "* * * 'the husband and wife have lived under the same roof but have had no marital relations. * * * they used the same dining table, but at different times * * *. The essential thing is not separate roofs, but separate lives. These parties have been separated as effectively as though they were living in different homes.' " *Boyce* v. *Boyce,* 80 U. S. App. D. C. 355-356, 153 F. (2d) 229, 230.[2]

3. Finally, as was said by this Court in *Buford* v. *Buford,* 81 U. S. App. D. C. 169, 170, 156 F. (2d) 567, appellee's "remarriage is * * * immaterial in this suit. If it be assumed that [appellee's] bigamy led to adultery, that is likewise immaterial here, since recrimination is no longer a bar to a divorce suit."

---

[2] Followed in *Hurd* v. *Hurd,* 86 U. S. App. D. C. 62, 63 179 F. (2d) 68, and *Hawkins* v. *Hawkins,* 89 U. S. App. D. C. 147, 191 F. (2d) 344.

ARGUMENT

I

"When a Separation Has Continued for More Than Five Years and Neither Party Has Tried to End It, a Divorce Should Be Granted."

81/169

The above quotation, taken from the opinion of this court in *Buford* v. *Buford, supra,* is a succinct summary of the interpretation which this Court has placed upon the five year voluntary separation statute in a series of cases coming before it. When the statute as so interpreted is applied to the facts of the instant case it becomes evident that the District Court was correct in granting Mr. Uline a divorce.

The appellee filed this action for divorce in the District Court on February 10, 1951. (R. 2.) At that time the parties had been continuously separated since March or April 1930, a period of approximately twenty-one years. (R. 34.)

The parties had been married in 1895. Mrs. Uline says that she and her husband never had much happiness in their married life. (R. 118.) Some time between 1910 and 1920 Mr. Uline left his wife for a period of seven or eight months. (R. 33.) When Mr. Uline returned he and his wife resumed marital relations "for a little while" (R. 58) but then stopped entirely, and by Mrs. Uline's own admission during the last ten years of their life in Cleveland (1920 to 1930) she and Mr. Uline slept in separate rooms and did not live together as husband and wife. (R. 58, 61, 62.)[3] Mr. Uline's explanation of this intolerable condition could not be given at the trial because of his illness, but his comments on some of the reasons for the unhappy home life of the parties are found in a pleading which he filed in the Florida courts in 1951. (R. 131-135.) For the purpose of this case it is not necessary to pass on his detailed charges. It is sufficient to say that from his point of view at least, conditions at home were so bad that he finally left his wife in Cleveland in the spring of 1930 and came to Washington, and the marital separation which had been a *fait accompli* for a number of years prior to 1930 (see Finding of Fact #2, R. 16) now became a geographical separation as well.

---

[3] Mrs. Uline sought to repudiate this admission on the second day of the trial. See detailed discussion, pp. 15-19 infra.

The District Court declined to hold that Mr. Uline's removal to Washington in 1930 constituted desertion of his wife, but said only:

> "The plaintiff left the residence of plaintiff and defendant in Cleveland and moved to Washington, D. C., where he has ever since resided, separate and apart from the defendant, and has always been unwilling to resume his marital status with the defendant." (R. 16.)

Soon after Mr. Uline came to Washington to live, Mrs. Uline decided to move to Toledo to be near her two daughters who were living there. (R. 35.) She did not consult Mr. Uline about this move; she merely notified him that she had found a place in Toledo and intended to move there from Cleveland, and he sent her a check to cover moving expenses. (R. 35.) Mrs. Uline continued to live in Toledo for nineteen years, until in 1949 she moved to Detroit, again to be with her daughter. (R. 36.)

Mrs. Uline saw Mr. Uline several times at Christmas in Toledo during the early thirties, when he came to visit their daughters, and she testified that then she asked him if he would let her come to Washington. (R. 38.) Apparently she must have written him in 1933 to the same effect for there is in evidence a letter which Mr. Uline wrote her on February 21, of that year, in which he asks her not to come to Washington, and says that he could not stand living with her any longer and that her "statements of love come rather late." (R. 148.)

From 1933 to 1938, the parties did not see each other at all (R. 37), though Mr. Uline of course continued to send regular maintenance checks to Mrs. Uline, and she occasionally sent small presents to him, which he acknowledged. (See defendant's exhibits 4-15, inclusive.)

On August 5, 1938, Mr. Uline wrote his wife a letter (R. 38, 39) in which he proposed a definite financial arrangement for the rest of her life conditioned upon her securing a divorce in Reno, Nevada. On September 1, 1938, not having heard from Mrs. Uline, he wrote her again. (R. 40.) To these letters Mrs. Uline, in 1938, then replied as follows (R. 41, 42):

> "Dear MIKE:
>
> "Your letter was such a shock to me that I could not write. After 36 years of married life, one does not terminate it by divorce. For the sake of our children, our grandchildren and our dignity, a divorce must not be. After all, my religious principles would not permit it —and neither should yours.
>
> "You say you want a divorce because you want to make a will. Isn't it conceivable that I might die before you?
>
> "I am very lonely and blue now. It is not pleasant at my age to live alone. The separation is of your choosing. Do not make me suffer more than I am now.
>
> "Sincerely,
>
> "CARRIE."

Mrs. Uline's letter to Mr. Uline in 1938, which has just been quoted, marked the final and complete end of the personal relationship between the parties. Having written it and mailed it to Mr. Uline she kept a copy for herself (R. 42); and from then on she accepted the separation from her husband as being absolute and final. At no time after writing this letter did she ever make any attempt whatever to end the separation. From 1938 on, as will be seen, her only efforts were directed toward better financial security for herself.

From 1938 to 1941 Mrs. Pratt, one of the two daughters of the parties, lived in Washington. (R. 101, 111).[4] During this period of time Mrs. Uline came to Washington to visit this daughter many times, probably every two or three months. (R. 57, 58, 76, 77.) On a couple of occasions, according to the testimony of Mrs. Pratt's nephew (R. 113), Mr. Uline came to visit Mrs. Pratt when Mrs. Uline was in the house, but they were simply casual visits. On no other occasion while Mrs. Uline was in Washington visiting her daughter, Mrs. Pratt, did she ever talk with Mr. Uline. She did not call him at his office nor did she call him at his home; she never asked him to see her; she never went to see him. (R. 79.) One of the reasons Mrs. Uline gave for not getting in touch with Mr. Uline was that he was going around with another woman named Betty Perkins, and she did not want to get in touch with him then. (R. 94, 101, 102.)

In 1941 Mrs. Pratt moved back to Toledo and Mrs. Uline ceased making her visits to Washington. Throughout the ensuing twelve years she never saw Mr. Uline again except once in 1946, at their granddaughter's wedding[5] when they simply engaged in "small talk about the wedding." (R. 37.) (The statement found on page 8 of appellant's brief to the effect that Mrs. Uline asked Mr. Uline to allow her to come to Washington on this occasion is not borne out by the record.)

The truth of the matter is that at no time after Mrs. Uline wrote her 1938 letter to Mr. Uline, in which she said that the separation was not of her choosing and that she would oppose a divorce, did she ever suggest a reconciliation to Mr. Uline—verbally, in writing, or through an intermediary. It is true that Mrs. Uline testified in general terms that each year up to 1949 she sent Mr. Uline a Christmas note in which she asked if she could come back to live in Washington with him. (R. 80, 85.) This, however, was obviously an incorrect statement. As against it there is not only the stipulation in the record that Mr. Uline would testify he never received any such letters (R. 118), but the overwhelming weight of circumstantial evidence. Mrs. Mrs. Uline did not keep a copy of a single one of these alleged annual letters, as she would have done were she seeking to make a record. (And she was careful enough to keep a copy of her 1938 letter discussing the separation (R. 42).) Furthermore, the evidence in this case shows clearly that Mr. Uline is and always has been a forthright man, writing and saying what he thinks and "pulling no punches;" and in view of his attitude toward Mrs. Uline, letters from her suggesting reconciliation would inevitably have provoked blunt replies. Yet Mrs. Uline was unable to produce in court a single reply from her husband to the alleged annual letters seeking reconciliation. In fact, all but three of the letters from him which Mrs. Uline introduced in evidence were dated prior to 1938, and two of the three latter letters were spontaneous outbursts from Mr. Uline in 1946, demanding a divorce. And it may be noted, finally, that Mrs. Uline herself admitted on the stand, in an unguarded moment, that "I couldn't write to him when I knew he had someone else, I couldn't do it," and that she didn't wish to be in touch with him during the *sixteen years* when she says he was going around with Betty Perkins (R. 94).

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[4] The dates were originally erroneously stipulated between counsel as being between 1934 to 1940, but the difference is immaterial. (R. 76.)

[5] excluding court appearances in litigation with her husband.

In view of all of the above evidence, it is clear that the District Court ruled correctly in rejecting a proposed finding submitted by counsel for the appellee that Mrs. Uline had written to her husband each year, seeking to come back to him; and it is submitted that this court should now likewise reject Mrs. Uline's statements to that effect.

In 1946, eight years after "the defendant abandoned hope of reconciliation with the plaintiff and * * * thereafter reluctantly recognized their permanent separation as a reality,"[6] Mr. Uline wrote his wife another letter proposing a lifetime financial settlement with her, conditioned upon her permitting him to get a divorce. (R. 45, 46.) Mrs. Uline did not answer this letter (R. 46) but engaged the law firm of Shumaker, Loop & Kendrick of Toledo, Ohio, to represent her interests. (R. 120.) According to an affidavit filed in this action by Ross W. Shumaker of said firm, (R. 120) Mrs. Uline "related [to him] that her said husband, a man of large wealth and income, had, for a number of years, been paying her a grossly inadequate sum for her maintenance, which consisted of irregular payments of about $40.00 per week supplemented with occasional additional amounts; that he was continually demanding that she obtain a divorce from him, and threatening to deprive her of any interest in his estate. She instructed the Toledo firm to proceed by negotiation and/or suit to secure an adequate allowance of maintenance for her and to take any and all steps to protect her marital status and rights. * * *" It will be noted from this affidavit and from Mrs. Uline's own testimony (R. 50-52) that what Mrs. Uline was now interested in was *not* a reconciliation with her husband but financial security. In fact, according to Mrs. Uline's own testimony, she asked for a $200,000 settlement from her husband. (R. 52.)

Mrs. Uline did not succeed in obtaining from Mr. Uline a financial settlement satisfactory to her (see affidavit of her counsel, R. 121), whereupon on April 8, 1947, she took the offensive by filing a suit against her husband in the District Court for the District of Columbia seeking, among other things, "a permanent and proper allowance from the defendant for her maintenance and support" (R. 124-126.) This suit was settled on February 7, 1950, by a consent "Judgment for Permanent Maintenance" (R. 129) under which Mr. Uline agreed to pay to Mrs. Uline $112.50 per week as permanent maintenance for the remainder of his life.

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[6] **Quotation from District Court's Findings, (R. 17)**

But Mr. Uline still wanted a divorce and, although it is undisputed that he continued at all times since 1930 to maintain his residence and domicile in the District of Columbia (R. 30-32), on March 23, 1950, he filed a divorce suit against Mrs. Uline in Florida alleging constructive desertion by her in 1930 (R. 131-135.) Mrs. Uline answered the complaint; she denied the jurisdiction of the Florida Court on the ground that her husband was a resident of the District of Columbia; she denied desertion on her part, alleging that her husband had deserted her; and then she counterclaimed against her husband in the Florida Court, seeking a decree against him "for such *permanent alimony* as is commensurate with her station in life, and that payment thereof be secured in such manner as to the court may appear proper in the circumstances" (R. 135, 146.)

Nowhere in Mrs. Uline's pleadings, either in her maintenance proceedings in the District of Columbia or in her answer to the divorce suit in Florida, did she tender herself as being ready and willing to resume marital relations with her husband. Throughout these pleadings there is an implied recognition of the permance of the separation.

As has been stated, the Florida divorce suit was dismissed without prejudice. Mr. Uline obtained an admittedly invalid Mexican divorce, and on July 5, 1950, went through a marriage ceremony with Elva Houseman. They have been living together ever since.

It is submitted that the facts above recited bring this case specifically within the doctrine of *Parks* v. *Parks, supra,* and subsequent decisions of this court. After the year 1938, to quote again from the directly relevant language of the Parks case:

> "* * * It is perhaps a fair inference that she [Mrs. Uline] reconciled herself to separation. But that, we think, is not the question. Even if she did, in fact, wish her husband to return, in the course of time her silent acquiescence in the separation made it voluntary in the statutory sense. Desires which are not reflected in conduct have little or no social or legal significance. The law is full of instances in which the will that counts is the apparent rather than the secret will. The liberal purpose of the 1935 amendment points to this construction. That purpose was to permit termination in law of certain marriages which have ceased to exist in fact. This is such a mariage. * * *"

The situation in the instant case in wholly different from that involved in *Martin* v. *Martin,* 82 U. S. App. D. C. 40, which is the principal authority relied upon by counsel for appellant. The separation in that case had lasted for only six years at the time the divorce suit was filed, not twenty-one years. It had not been preceded, as had the Uline separation, by abandonment of cohabitation for a number of years preceding. And in the *Martin* case, the court specifically found "that the defendant and the children of the parties, at the request of the defendant, and on her behalf, have made known to the plaintiff at periodic intervals the desire and wish of the defendant that the plaintiff and defendant should resume a common home."

In the case at bar the District Court was more than justified in finding that such efforts toward reconciliation as Mrs. Uline made were "more or less casual in their nature and character." (R. 15.) The District Court commented that during the three years when Mrs. Uline was spending some two or three months of each year visiting her daughter and in close proximity to her husband, she made no effort either herself or through her children or grandchildren to see her husband and to try to bring them back together. (R. 15.) The court further found:

> "This marriage has not existed in fact for twenty years or more. I think definitely not since 1930, and possibly, or even probably for some period prior to 1930, and I think as time went on, however unhappy she [Mrs. Uline] was at the continued existence of this separation, she came to realize that hope of reconciliation had to be abandoned, and I think she did abandon it long ago and accepted the inevitable." (R. 16.)

The soundness of the District Court's action in granting a divorce in this case is confirmed not only by the *Parks* case but by other recent decisions of this court. For example, in *Bowers* v. *Bowers,* 79 U. S. App. D. C. 146, 147; 143 F. 2d. 158, this court said:

> "* * * We have held that if both parties voluntarily and continuously acquiesce in separation during five years, the statute authorizes divorce even though the separation was not originally voluntary on both sides. * * *"

In *Cocci* v. *Cocci,* 88 U. S. App. D. C. 43; 185 F. 2d. 898, the defendant wife had opposed a suit for a divorce, alleging as in the case at bar "that the husband had deserted her; that she attempted on several occasions to obtain a reconciliation; and that she still desired reconciliation." The District Court declined to grant the husband a divorce. This court reversed that ruling and said:

> "* * * There was no substantial evidence that the wife had during the statutory five-year period made any real effort to get in touch with the plaintiff-husband, much less to attempt to end the separation and reestablish the marriage relationship. There was testimony that 'she sought through the intermediation of a third party to bring about a reconciliation' but this was quite evidently at a time earlier than the five-year period with which we are here concerned. Certainly there was nothing approaching the state of facts disclosed in *Martin v. Martin,* 82 U. S. App. D. C. 40, 160 F. 2d 20, where the wife requested the husband at 'periodic intervals' to resume a common home. True, the wife here testified she did not now want, and at no time had wanted, a divorce. But this of itself does not show that the separation was not voluntary.
>
> "We consider that the divorce should have been granted. * * *"

Finally, we quote the following language from *Buford* v. *Buford, supra,* and ask this Court to apply that language squarely to the facts of the case at bar:

> "* * * It is true that * * * the appellant may not have consented to the separation when it began but, paraphrasing what we said in the Parks case, [her] silent acquiescence made the separation voluntary in the statutory sense less than six months after it began and therefore more than five years before this suit was brought. When a separation has continued more than five years and neither party has tried to end it a divorce should be granted."

II

Appellant Was Entitled to a Divorce Based On the Voluntary Separation of the Parties in Their Cleveland Home Prior to Their Geographical Separation in 1930.

Wholly apart from the geographical separation which existed between the parties from 1930 to the date of filing this suit, during which period Mrs. Uline lived in Ohio and Michigan and Mr. Uline lived in the District of Columbia, it is submitted that there was a voluntary separation from bed and board for more than five years during the period from 1920 to 1930, which itself would entitle appellee to a divorce. This Court has held that to qualify for a divorce under the five year voluntary separation statute it is not necessary that the parties live under separate roofs.

In *Hurd* v. *Hurd,* 86 U. S. App. D. C. 62, 63, 179 F. (2d) 68; this Court said:

> "* * * the essential thing is not separate roofs, but separated lives—that the parties so live, whether under one roof or two, as to abandon with apparent permanency of intention, the relation of husband and wife in all but the most technical legal sense."

To the same effect see *Hawkins* v. *Hawkins,* 89 U. S. App. D. C. 147, 191 F. (2d) 344, and *Boyce* v. *Boyce* supra.

On the first day of the trial of the case at bar Mrs. Uline testified repeatedly that during the ten years immediately preceding the time Mr. Uline left their home in Cleveland to come to Washington, she and her husband had not lived together as husband and wife, that is, that they had not cohabited. On the second day of the trial, Mrs. Uline sought to repudiate this testimony which she had given the day before but, as indicated by the Court's finding of fact on the subject (R. 16), the trial judge was not impressed with her repudiation of her prior testimony.

As has been heretofore stated, Mrs. Uline testified that her husband left home for some seven or eight months between 1910 and 1920. (R. 33.) Then the following colloquy occurred on cross-examination of Mrs. Uline by appellee's counsel:

> "Q. When he came back in 1910, or whenever it was, to 1930, you never lived together as husband and wife?

A. Oh, yes, we did, when he came back from his eight months stay.

"Q. Did you continue to live together as husband and wife? A. For a little while, yes.

"Q. For the last ten years when you and he were living under the same roof, prior to the time he left you this last time you did not live together as husband and wife? A. No. About ten years, yes." (R. 58.)

* * * * * * *

"Q. Mrs. Uline, you have testified during the last ten years before Mr. Uline and you separated in 1930, ten years before that you discontinued living together as husband and wife? * * * Did you sleep in separate rooms, Mrs. Uline, during that period? A. Yes." (R. 61.)

* * * * * * *

"The Court: * * * Between, say, roughly 1920 and 1930, during that 10-year period, were you and your husband living in the same house, but for all practical purposes living separate nd apart? That is the question.

"The Witness: Yes; we were living in the same house. Yes.

"The Court: Not as husband and wife?

"The Witness: Not as husband and wife." (R. 62.)

Counsel for appellant also offered in evidence extracts from a deposition given by Mrs. Uline in the maintenance proceedings which she had filed against Mr. Uline in the District Court in the year 1947. In that deposition Mrs. Uline gave the following testimony:

"Question: You argued over him not being home as much as you wanted him home, did you?

"Answer: You couldn't blame me for that, because I did like to have him home.

"Question: I just asked you if you did.

"Answer: Yes. He wasn't home, he was never home. He was out mostly every night.

> "Question: This continued quite a long time, between you and Mr. Uline, before the separation took place, didn't it, this type of argument?
>
> "Answer: There weren't too many arguments between he and I, because we never talked to each other, very little.
>
> "Question: You mean that you wouldn't talk to him?
>
> "Answer: I would talk to him, but he would just pay no attention to me, so I didn't say too much and he didn't say too much." (R. 117.)

Following Mrs. Uline's admission of the separation from bed and board which she and her husband had during the period 1920 to 1930, the Court permitted counsel for appellant to amend the complaint so as to conform to the evidence. (R. 62.)

Despite all of the foregoing testimony which was very clear-cut and positive on the part of Mrs. Uline, she sought upon the second day of the trial to repudiate her previous statements. (R. 83, 104.)

In view of the contradictory testimony given by Mrs. Uline on this subject, the finding of the trial court who heard her testify is entitled to great weight. (See *Morfessis* v. *Morfessis,* 87 U. S. App. D. C. 292, 184 F. (2d) 468.) The trial judge said in his oral opinion:

> "This marriage has not existed in fact for twenty years or more. I think definitely not since 1930, and possibly, or even probably for some period prior to 1930, * * *."

Again in his findings of fact the trial judge said: (R. 16)

> "For ten years or more prior to March 1, 1930, plaintiff and defendant lived under the same roof in Cleveland, Ohio, but they had probably not cohabited and were living separate lives for several years prior to March 1, 1930."

In view of Mrs. Uline's own admissions, it is submitted that this Court would be justified in holding that Mr. Uline was entitled to a divorce on the ground of five years voluntary separation between him and his wife, even prior to their geographical separation which began in 1930.

III

Appellant Is Not Estopped From Obtaining This Divorce Because of His Invalid "Mexican Divorce" and Subsequent Purported Marriage.

In the conclusion of the brief of counsel for appellee, counsel implies that Mr. Uline is not entitled to a divorce because of his abortive attempt to obtain a divorce in Florida, his actual invalid divorce in Mexico, and presumably his subsequent marriage ceremony with Elva Houseman. A similar argument was made before this Court in *Buford* v. *Buford, supra,* and this Court specifically rejected the argument. In the *Buford* case the husband had previously sued his wife in the District of Columbia for absolute divorce on the ground of desertion, but the divorce had been denied. He later went through a marriage ceremony with a third person in Maryland. Later still, when the separation between his first wife and himself had lasted for five years, he sued again for divorce in the District of Columbia. This court held (reversing the District Court) that he was entitled to a divorce, and, ignoring the alleged "unclean hands" of the husband, said:

> "Appellant's invalid remarriage did not preclude appellant and appellee, who continued to be lawfully married, from ending their separation and resuming life together. There is no evidence that the remarriage caused either appellant or appellee to try, or even to wish, to resume life together. The remarriage is therefore immaterial in this suit. If it be assumed that appellant's bigamy led to adultery, that is likewise

> immaterial here, since recrimination is no longer a defense to a divorce suit.''

There is nothing which counsel for the appellee can add to the language of this court in the *Buford* case.

Conclusion

As the trial judge said in his opinion: ''This marriage has not existed in fact * * * since 1930 and * * * probably for some period prior to 1930 * * *. However unhappy she [Mrs. Uline] was at the continued existence of this separation, she came to realize that hope of reconciliation had to be abandoned, and I think she did abandon it long ago. * * *''. (R. 16.)

Under similar circumstances this Court has said that the purpose of the statute here involved ''was to permit termination in law of certain marriages which have ceased to exist in fact. This is such a marriage. * * * the defendant's silent acquiescence made the separation voluntary, in the statutory sense, * * * more than five years before the plaintiff filed this suit. It follows that he is entitled to a divorce.'' *Parks* v. *Parks,* supra.

For the reasons above set forth the appellee submits that the judgment of the District Court here appealed from is free from error, and should be affirmed.

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